

BR/GT I/10 e/69

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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, 12 August 1969
BR/GT I/10/69

- Secretariat -

W o r k i n g d o c u m e n t

for a Draft Convention for a European System for the Grant of Patents

put forward by the Chairman of Working Party I

Articles 119 to 123c, 153 to 173 and 180

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

Introductory Note

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

Proposals for Articles 1 to 41 were set out in a first working document, BR/GT I/2/69, dated 2 June 1969 (German) and 9 June 1969 (English and French).

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.

Proposals for Articles 54 to 113 were set out in a second working document, BR/GT I/9/69, dated 1 August 1969.

The 1962 Draft Convention relating to a European Patent Law, the structure of which has provisionally been followed, contains the following groups of Articles subsequent to Article 113 :

Articles 114 to 118 Conversion into national application

Articles 119 to 123 Renewal of European Patents

Articles 124 to 135	Surrender, lapse and revocation of the European patent
Articles 136 to 152	Compulsory licences
Articles 153 to 173	Common procedural provisions of the European Patent Office
Articles 174 to 184	Procedure in infringement and other civil proceedings
Articles 185 to 205	Transitional provisions
Articles 206 to 217	Final provisions

The present third working document contains proposals for the following groups of Articles :

Articles 119 to 123c	Renewal of European patent applications and European patents
Articles 153 to 173	Common procedural provisions of the European Patent Office

In addition, a proposal for Article 180 on opinions by the European Patent Office has been adopted from the group of Articles on procedure in infringement.

The missing groups of Articles have either been deleted in view of the new objectives of the Convention, or else discussion of them has been provisionally postponed.

The three working documents now submitted cover the most important points of patent law from the 1962 Draft which fall under the terms of reference of Working Party 1.

A further group of Articles, which could not have been contained in the 1962 Draft, is lacking, and that is a series of provisions laying down, on the one hand, that a European patent application can be filed via an international patent application pursuant to the Patent Co-operation Treaty (PCT) and, on the other hand, that a European patent application can serve as a basis for an international application. In the memorandum of 17 March 1969, submitted to the Inter-governmental Conference, it is envisaged on page 7 that the PCT Plan would be taken into consideration. The Chairman's proposals must therefore be supplemented by a corresponding group of Articles. These will be submitted later in a special working document and will also come up for discussion at the third meeting of Working Party I. Following the provisional order of the Convention, this group of Articles is to be incorporated as Articles 113a et seq.

The proposals for Articles 119 to 123c, 153 to 173 and 180 contained in the present third working document are based, as in the preceding documents, on the assumption 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 of the Draft Patent Co-operation 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.

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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.

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CHAPTER III^{bis}
INTERNATIONAL APPLICATION PURSUANT TO THE
PATENT CO-OPERATION TREATY

Articles 113a et seq.

Chairman's proposal :

The Articles which provide, on the one hand, that a European patent application can be filed via an international patent application pursuant to the Patent Co-operation Treaty and, on the other hand, that a European patent application can serve as a basis for an international application, should be inserted here. The relevant proposals will be submitted later.

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CHAPTER IV
CONVERSION OF A EUROPEAN PATENT APPLICATION INTO A NATIONAL APPLICATION

Articles 114 to 118

Chairman's proposal :

The system for converting a European patent application into a national patent application is to be retained. Discussion of Articles 114 to 118 is to be postponed, however, until the basic provisions for the procedure for the grant of European patents have been established.

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PART VI

RENEWAL OF EUROPEAN PATENT APPLICATION AND EUROPEAN PATENTS

Note :

PART VI contains, in Articles 119 to 123c, provisions relating to renewal fees for European patent applications and European patents and to the translation of specifications.

The Chairman's proposals are based on the assumption that renewal fees will be payable to the European Patent Office for European patent applications. Whether these fees will remain at a constant level (as in the Dutch system) or whether they are to be progressively graduated (as in the German system) is to be left to the Rules relating to fees. Similarly, it will be laid down in the Rules relating to fees whether a supplementary fee (national fee) is to be payable for each designated Contracting State.

Subsequent to the grant of a European patent, the renewal fees under national law would be paid to the national patent offices. Special arrangements can be made by the Contracting States which have concluded a special agreement within the meaning of Article 8a. These States may fix special renewal fees for the unitary patent, to be paid to the European Patent Office, independent of the national renewal fees.

Whether, and to what extent, renewal fees for European patent applications and for European patents once granted are to be used to finance the European Patent Office should be left to the Financial Provisions (Articles 42 to 53).

Article 119

Renewal fees

1962 Draft	EFTA Draft	1965 Draft
<p>The renewal fees to be paid in respect of the European patent shall be those laid down by the Rules relating to fees adopted pursuant to this Convention. These fees are due in respect of the third year and each of the following years, calculated from the date of filing of the application. Patents of addition are not subject to the payment of renewal fees.</p>	<p>The renewal fees to be paid in respect of the European patent shall be those laid down by the Rules relating to fees adopted pursuant to this Convention. Each renewal fee shall include a sum in respect of each country covered by the patent. These fees are due in respect of the third year and each of the following years, calculated from the date of filing of the application. Patents of addition are not subject to the payment of renewal fees.</p>	<p>* The renewal fees to be paid in respect of the European patent shall be those laid down by the <u>Rules</u> relating to fees adopted pursuant to this Convention. These fees shall be due in respect of the third year and each of the following years, calculated from the date of filing of the application. <u>Patents of addition</u> shall not be subject to the payment of renewal fees.</p>

RENEWAL OF EUROPEAN PATENT APPLICATIONS

Article 119

Renewal fees for European patent applications

Chairman's proposal

(1) The renewal fees to be paid to the European Patent Office in respect of European patent applications shall be those prescribed by the Rules relating to fees adopted pursuant to this Convention. These fees shall be due in respect of the third year and each subsequent year, calculated from the date of filing of the application.

Note :

(2) Applications for European patents of addition shall not be subject to the payment of renewal fees. In respect of applications for European patents of addition converted into independent patent applications or deemed to be independent patent applications in accordance with Article 88, paragraph 3a, the renewal fees shall be payable in the same manner as for originally independent patent applications.

The Chairman has proposed the second sentence of paragraph 2 in order to define the date from which renewal fees are due for converted applications for patents of addition.

Article 120

Date of payment of renewal fees

1962 Draft	EFTA Draft	1965 Draft
<p>(1) Renewal fees must be paid before the commencement of the year in respect of which they are due. Renewal fees due in respect of any period prior to the grant of a provisional European patent must be paid not later than four months after such grant.</p> <p>(2) When a renewal fee has not been paid before the date indicated in paragraph 1, the fee may be validly paid within six months of the aforesaid date, provided that the additional fee prescribed by the Rules relating to fees is paid at the same time.</p> <p>(3) The lapse of a European patent for failure to pay a renewal fee within the due period shall be deemed to have occurred at the end of the year preceding that in respect of which the fee fell due.</p>	<p>(1) +</p> <p>(2) +</p> <p>(3) +</p>	<p>(1) * Renewal fees must be paid before the commencement of the year in respect of which they are due. <u>Renewal fees due in respect of any period prior to the grant of a provisional European patent must be paid not later than four months after such grant.</u></p> <p>(2) When a renewal fee has not been paid before the term indicated in paragraph 1, the fee may be validly paid within six months of the aforesaid term, provided that the additional fee prescribed by the Rules relating to fees adopted pursuant to this Convention is paid at the same time.</p> <p>(3) * The lapse of a European patent for failure to pay a renewal fee within the due period shall be deemed to have occurred at the end of the year preceding that in respect of which the fee fell due.</p>

Article 120

Date of payment of renewal fees

Chairman's proposal

(1) Renewal fees must be paid before the commencement of the year in respect of which they are due.

(2) +

(3) - deleted -

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Article 121
Proof of payment

1962 Draft	EFTA Draft	1965 Draft
Subject to the provisions of Article 113, the European Patent Office shall alone be competent to decide whether the renewal fees have been paid in due time. In the event of dispute, the Patent Administration Division will decide upon the matter, if so requested.	+	Subject to the provisions of <u>Article 113</u> , the European Patent Office shall alone be competent to decide whether the fees provided for in Article 119 and Article 120, paragraph 2, have been paid in due time.

Article 121
Proof of payment

Chairman's proposal

The European Patent Office shall alone be competent to decide whether the fees provided for in Article 119 and Article 120, paragraph 2, have been paid in due time.

Article 122

Extension of time for the payment of renewal fees

1962 Draft	EFTA Draft	1965 Draft
<p>(1) The European Patent Office may, upon request, grant to any person who is the proprietor of a European patent supplementary extensions of time for the payment of renewal fees, provided that the applicant for such an extension proves, within the period prescribed for the payment of the fees, that he was prevented from paying them by lack of funds. Any extension granted shall not exceed two years, and may be renewed, provided payment is not deferred beyond the two years following confirmation of the provisional European patent. Extension can only be granted in respect of an amount not exceeding nine-tenths of the total fees payable. Further, the grant of an extension of time for payment may be made subject to the payment of a deposit.</p>	<p>(1) +</p>	<p>(1) The European Patent Office may, upon request, grant to any person who is the proprietor of a European patent supplementary extensions of time for the payment of renewal fees, provided that the applicant for such an extension proves, within the period prescribed for the payment of the fees, that he was prevented from paying them by lack of funds. Extensions may be granted and renewed for a maximum period of two years, provided payment is not deferred beyond the two years following final confirmation of the provisional European patent. Extension can only be granted in respect of an amount not exceeding nine-tenths of the total fees payable. Further, the grant of an extension of time for payment may be made subject to the payment of a deposit.</p>
<p>(2) Notwithstanding paragraph 1 above, the European Patent Office may authorise the proprietor of a patent, upon his request, to make, within a period of one year calculated from the expiry of the second year following the confirmation of the provisional European patent, instalment payments of the total amount of renewal fees due at that date.</p>	<p>(2) +</p>	<p>(2) Notwithstanding paragraph 1 above, the European Patent Office may authorise the proprietor of a patent, upon his request, to make, within a period of one year from the expiry of the second year following the final confirmation of the provisional European patent, instalment payments of the total amount of renewal fees deferred up to that date.</p>
<p>(3) During the period of exemption from payment granted in accordance with</p>	<p>(3) +</p>	<p>(3) - deleted -</p>

Article 122

Extension of time for the payment of renewal fees

Chairman's proposal

- deleted -

Note :

The object of this provision was to allow applicants lacking funds to postpone payment of renewal fees falling due during the proceedings until after the confirmation of the provisional European patent, i.e. after commencement of exploitation of the European patent. With the new system for the grant of a series of national patents, this object can no longer be achieved, since the continuation of the European patent as a national patent would not be made dependent on the subsequent payment of European fees. To compensate applicants, it is proposed that the provisions relating to assistance in Article 169 should be extended to renewal fees.

Should the Working Party wish to retain the possibility of the European Patent Office granting supplementary extensions of time for the payment of renewal fees, such extensions would have to be limited to the period up to the date of the grant of the European patent.

1962 Draft	EFTA Draft	1965 Draft
<p>Article 169, paragraph 1, the provisions of paragraph 1 <u>/above/</u> shall similarly apply, without it being necessary to prove lack of funds. Such provisions shall apply equally, and without proof, as from the date on which the request specified in Article 169, paragraph 1, is submitted. If this request is refused, the renewal fees must be paid within three months of such refusal. The provisions of paragraph 2 and of Article 123 are applicable under this procedure.</p>		

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Article 123

Failure to effect payment within the extended period

1962 Draft	EFTA Draft	1965 Draft
<p>If renewal fees in respect of which an extension has been granted in accordance with Article 122 are not paid in due time, the European patent will lapse at the expiry of the said period. The renewal fees unpaid at the date of expiry remain due. Failure to pay will be established by a decision of the Patent Administration Division.</p>	<p>+</p>	<p>* If renewal fees in respect of which an extension has been granted in accordance with Article 122 are not paid in due time, the European patent shall lapse at the expiry of the said period. The renewal fees unpaid at the date of expiry remain due. Failure to pay shall be established by a decision of the Patent Administration Division.</p>

Article 123

Failure to effect payment within the extended period

Chairman's proposal

- deleted -

Note :
See Note to Article 122.

Article 125, paragraph 1 (c)

1962 Draft	EFTA Draft	1965 Draft
<p>(1) Apart from the cases specified in Article 16, paragraph 5, a provisional European patent will lapse :</p> <p>(c) if the renewal fees are not paid within the proper period.</p>	<p>(1) Apart from the cases specified in Article 16, paragraph 5, a European patent will lapse :</p> <p>(c) +</p>	<p>(1)*<u>Apart from the cases specified in Article 16, paragraph 5, a provisional European patent shall lapse :</u></p> <p>(c) * <u>if the renewal fees are not paid within the proper period.</u></p>

Article 123a

Consequence of failure to effect payment

Chairman's proposal

If a renewal fee has not been paid by the end of the period referred to in Article 120, paragraph 2, the European patent application shall be deemed to have been withdrawn.

Note :

It is possible that, at the time of the grant of the European patent (Article 101), a renewal fee for the European patent application could have fallen due but not yet have been paid. Were the European patent to be granted without taking into account any failure to pay the renewal fees due, a sanction would have to be provided in Article 123a to the effect that, in the event of failure to pay, the European patent would lapse. Such a provision would no longer appear to be appropriate, for the reasons set out in the Chairman's note to Article 122.

It is therefore proposed that Article 101, paragraph 2, should be complemented in such a manner as to make the grant of the European patent dependent on the payment of any renewal fees which have fallen due, in addition to being dependent on the payment of the fees for grant and printing.

Article 119
Renewal fees

1962 Draft	EFTA Draft	1965 Draft
<p>The renewal fees to be paid in respect of the European patent shall be those laid down by the Rules relating to fees adopted pursuant to this Convention. These fees are due in respect of the third year and each of the following years, calculated from the date of filing of the application. Patents of addition are not subject to the payment of renewal fees.</p>	<p>The renewal fees to be paid in respect of the European patent shall be those laid down by the Rules relating to fees adopted pursuant to this Convention. Each renewal fee shall include a sum in respect of each country covered by the patent. These fees are due in respect of the third year and each of the following years, calculated from the date of filing of the application. Patents of addition are not subject to the payment of renewal fees.</p>	<p>* The renewal fees to be paid in respect of the European patent shall be those laid down by the Rules relating to fees adopted pursuant to this Convention. <u>These fees shall be due in respect of the third year and each of the following years, calculated from the date of filing of the application. Patents of addition shall not be subject to the payment of renewal fees.</u></p>

CHAPTER II
RENEWAL OF EUROPEAN PATENTS

Article 123b

Renewal fees for European patents

Chairman's proposal

The renewal fees prescribed by national law shall be payable to the national central industrial property office of each Contracting State for which the patent has been granted. These fees shall be due in respect of the year, calculated from the day and month of filing the application, but commencing after the grant of the patent has become final, and for each subsequent year.

1962 Draft	EFTA Draft	1965 Draft
	<p data-bbox="915 352 1367 412">Article 34, paragraph 5, second sentence</p> <p data-bbox="909 435 1351 798">Any Contracting State may require that, for a patent to be effective in that State, the applicant shall furnish a transla- tion of the whole specifi- cation into the language of that State and the specification shall be printed and published also in that language.</p>	

Translation of specifications

Chairman's proposal

(1) If the specification of a European patent has not been drawn up in one of the official languages of a Contracting State, that State may prescribe that the proprietor of the European patent must send to the national central industrial property office, within a period of not less than three months after the date of publication of the grant of the patent in the European Patent Bulletin,

- (a) a translation of the specification into an official language of that State, or
- (b) a fee for the preparation of an official translation of the specification into an official language of that State.

(2) Any Contracting State which has adopted provisions pursuant to paragraph 1 may further prescribe that the proprietor of the patent must pay the costs of publication of such translation within the period referred to in paragraph 1.

(3) Any Contracting State may prescribe that, in the event of failure to observe a provision adopted in accordance with paragraph 1 or 2, the European patent shall be deemed to have been void in that State ab origino.

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PART VII

SURRENDER, LAPSE AND REVOCATION OF THE EUROPEAN PATENT

CHAPTER I

SURRENDER AND LAPSE

Articles 124 to 126

Chairman's proposal : deleted

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CHAPTER II

REVOCATION

Articles 127 to 135

Chairman's proposal :

The provisions of the Drafting Committee's version of Article 2, paragraph 2a, would make special provisions for the grounds and procedure for revocation of the European patent unnecessary. It is therefore proposed to delete Articles 127 to 135.

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PART VIII

COMPULSORY LICENCES

Articles 136 to 152

Chairman's proposal :

Deleted; see Note to Articles 127 to 135.

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PART IX

COMMON PROCEDURAL PROVISIONS OF THE EUROPEAN PATENT OFFICE

CHAPTER I

GENERAL PROVISIONS GOVERNING PROCEDURE

Article 153

Membership of the Boards of Appeal, etc., and challenges thereto

1962 Draft	EFTA Draft	1965 Draft
<p>(1) Members of Boards of Appeal or of Revocation Boards may not take part in the settlement of any matter if they have any personal interest therein, if they have previously been involved as representatives of one of the parties, or if, at an earlier stage, they contributed towards the final decision in the matter. Similarly, members of Revocation Boards may not take part in revocation proceedings in respect of a European patent, if they have taken part in proceedings for the grant or the confirmation of the said patent.</p>	<p>(1) Members of Boards of Appeal may not take part in the settlement of any matter if they have any personal interest therein, if they have previously been involved as representatives of one of the parties, or if, at an earlier stage, they contributed towards the final decision in the matter.</p>	<p>(1) * Members of Boards of Appeal or of Revocation Boards may not take part in the settlement of any matter if they have any personal interest therein, if they have previously been involved as representatives of one of the parties, or if, at an earlier stage, they contributed towards the final decision in the matter. In addition, members of Revocation Boards may not take part in revocation proceedings in respect of a European patent, if they have taken part in proceedings for the grant or the confirmation of the said patent.</p>
<p>(2) If, for one of the reasons mentioned in paragraph 1, or for any other reason, a member of a Board of Appeal or of a Revocation Board considers that he should not take part in the resolution of a matter, he shall inform the Board accordingly.</p>	<p>(2) If, for one of the reasons mentioned in paragraph 1, or for any other reason, a member of a Board of Appeal considers that he should not take part in the resolution</p>	<p>(2) * If, for one of the reasons mentioned in paragraph 1, or for any other reason, a member of a Board of Appeal or of a Revocation Board considers that he should not take part in the resolution of a matter, he shall inform the Board accordingly.</p>

PART IX

COMMON PROCEDURAL PROVISIONS OF THE EUROPEAN PATENT OFFICE

CHAPTER I

GENERAL PROVISIONS GOVERNING PROCEDURE

Article 153

Membership of the Boards of Appeal etc., and challenges thereto

Chairman's proposal

(1) Members of the Boards of Appeal or of the enlarged Board of Appeal may not take part in the settlement of any matter if they have any personal interest therein, if they have previously been involved as representatives of one of the parties, or if, at an earlier stage, they contributed towards the final decision in the matter.

(2) If, for one of the reasons mentioned in paragraph 1, or for any other reason, a member of a Board of Appeal or of the enlarged Board of Appeal considers that he should not take part in the resolution of a matter, he shall inform the Board accordingly.

1962 Draft	EFTA Draft	1965 Draft
<p>(3) Members of an Appeal or Revocation Board may be objected to by any party for one of the reasons mentioned in paragraph 1, or if suspected of partiality. No objection can be based upon the nationality of members or upon the fact that none of them is of the same nationality as the applicant.</p> <p>(4) The Board will decide as to the action to be taken in the cases specified in paragraphs 2 and 3. In cases of the kind referred to in paragraph 2, the decision will be taken without the participation of the member concerned.</p>	<p>of a matter, he shall inform the Board accordingly.</p> <p>(3) Members of a Board of Appeal may be objected to by any party for one of the reasons mentioned in paragraph 1, or if suspected of partiality. No objection can be based upon the nationality of members or upon the fact that none of them is of the same nationality as the applicant.</p> <p>(4) +</p>	<p>(3) * Members of a Board of Appeal or of a Revocation Board may be objected to by any party for one of the reasons mentioned in paragraph 1, or if suspected of partiality. No objection may be based upon the nationality of members or upon the fact that none of them is of the same nationality as the applicant.</p> <p>(4) * The Board shall decide as to the action to be taken in the cases specified in paragraphs 2 and 3. In cases of the kind referred to in paragraph 2, the decision shall be taken without the participation of the members concerned.</p>

Chairman's proposal

(3) Members of a Board of Appeal or of the enlarged Board of Appeal may be objected to by any party for one of the reasons mentioned in paragraph 1, or if suspected of partiality. No objection may be based upon the nationality of members or upon the fact that none of them is of the same nationality as the applicant.

(4) +

Article 154
Obtaining evidence

1962 Draft	EFTA Draft	1965 Draft
<p>(1) Evidence may be obtained in proceedings before the European Patent Office under the present Convention by means including :</p> <p>(a) the personal appearance of the parties;</p> <p>(b) interrogatories and the discovery of documents;</p> <p>(c) examination of witnesses;</p> <p>(d) expert opinion;</p> <p>(e) inspection of premises.</p> <p>(2) An Examining Division, a Patent Administration Division, a Board of Appeal and a Revocation Board will proceed to take the necessary investigating action, or will commission one of their members to do so.</p> <p>(3) A Board of Appeal and a Revocation Board, or any member duly commissioned to undertake investigations, may hear witnesses and experts on oath.</p>	<p>(1) +</p> <p>(a) +</p> <p>(b) +</p> <p>(c) +</p> <p>(d) +</p> <p>(e) +</p> <p>(2) An Examining Division, a Patent Administration Division, a Board of Appeal will proceed to take the necessary investigating action, or will commission one of their members to do so.</p> <p>(3) A Board of Appeal or any member duly commissioned to undertake investigations, may hear witnesses and experts on oath.</p>	<p>(1) * Evidence may be obtained in proceedings before the European Patent Office under the present Convention by means including :</p> <p>(a) * the personal appearance of the parties;</p> <p>(b) * interrogatories and the discovery of documents;</p> <p>(c) * examination of witnesses;</p> <p>(d) * expert opinion;</p> <p>(e) * inspection of premises.</p> <p>(2) Examining Divisions, Boards of Appeal and <u>Revocation Boards</u> may commission one of their members to take the necessary investigating action.</p> <p>(3) A Board of Appeal <u>or a Revocation Board</u>, or any member duly <u>commissioned to undertake investigations</u>, may hear witnesses and experts on oath, in so far as this is considered necessary.</p>

Obtaining evidence

Chairman's proposal

(1) +

(a) +

(b) +

(c) +

(d) +

(e) +

(2) Examining Divisions and Boards of Appeal may commission one of their members to take the necessary investigating action.

(3) A Board of Appeal or any member duly commissioned by it to undertake investigations may hear witnesses and experts on oath, in so far as this is considered necessary.

1962 Draft	EFTA Draft	1965 Draft
<p>(4) A Board of Appeal and a Revocation Board may impose a fine not exceeding upon any witness who fails to appear after service of a summons on him in proper form. A similar penalty may be imposed upon any witness who, without proper reason, refuses to testify or take an oath.</p> <p>(5) Each Contracting State will treat any perjury on the part of witnesses and experts as if the offence had been committed before a national court dealing with civil proceedings. On notification by the President of the European Patent Office, it will take proceedings before the competent national court against such persons.</p> <p>(6) Interested parties, witnesses and experts may be heard by the judicial authorities of their country of residence. Witnesses and experts may be heard, under oath, by the judicial authorities of their country of residence, even when the hearing has been requested by an Examining Section, an Examining Division or the Patent Administration Division.</p>	<p>(4) A Board of Appeal may impose a fine not exceeding upon any witness who fails to appear after service of a summons on him in proper form. A similar penalty may be imposed upon any witness who, without proper reason, refuses to testify or take an oath.</p> <p>(5) +</p> <p>(6) Interested parties, witnesses and experts may be heard by the judicial authorities of their country of residence. Witnesses and experts may be heard, under oath, where applicable, by the judicial authorities of their country of residence,</p>	<p>(4) A Board of Appeal or a Revocation Board may impose a fine not exceeding ... upon any witness who fails to appear after service of a summons on him in proper form. A similar penalty may be imposed upon any witness who, without proper reason, refuses to testify or take an oath. The fine may be waived if the witness offers a legitimate excuse.</p> <p>(5) * Each Contracting State shall treat any perjury on the part of witnesses and experts as if the offence had been committed before a national court dealing with civil proceedings. On notification by the President of the European Patent Office, it shall take proceedings before the competent national court against such persons.</p> <p>(6) * Interested parties, witnesses and experts may be heard by the judicial authorities of their country of residence. Witnesses and experts may be heard, under oath, by the judicial authorities of their country of residence, even when the hearing has been requested by an Examining Section, Examining Division or Patent Administration Division.</p>

Chairman's proposal

(4) A Board of Appeal may impose a fine not exceeding on any witness who fails to appear after service of a summons on him in proper form. A similar penalty may be imposed upon any witness who, without proper reason, refuses to testify or take an oath. The fine may be waived if the witness offers a legitimate excuse.

(5) +

(6) Interested parties, witnesses and experts may be heard by the judicial authorities of their country of residence. Witnesses and experts may be heard, under oath, by the judicial authorities of their country of residence, even when the hearing has been requested by an Examining Section or Examining Division.

1962 Draft	EFTA Draft	1965 Draft
	even when the hearing has been requested by an Examining Section, an Examining Division or the Patent Administration Division.	

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Article 155

Time limits

1962 Draft	EFTA Draft	1965 Draft
<p>When the present Convention or the Implementing Regulations specify a period to be determined by the European Patent Office, such period shall not be less than two months or more than four months. In certain special cases, the period may be extended upon request, but its total extent shall not exceed six months.</p>	<p>+</p>	<p>When this Convention specifies a period to be determined by the European Patent Office, such period shall not be less than two months or more than four months. In certain special cases, the period may be extended upon request.</p>

Article 159

Time limits

Chairman's proposal

+

BR/ST 1/10 e/69 mk

Article 156

Observation of time limit prevented by force majeure

1962 Draft	EFTA Draft	1965 Draft
<p>(1) The applicant for or the proprietor of a European patent who is prevented by "force majeure" from observing a time limit imposed by the European Patent Office will, upon application, have his rights re-established, if the non-observance in question has had the direct consequence, by virtue of the provisions of the present Convention or of the Implementing Regulations, of causing the refusal of the application for a patent, or of a request, or the loss of any other right or means of redress.</p> <p>(2) The application must be submitted within the two months following the removal of the cause of non-compliance with the time limit. The omitted act must be completed within this period. The application will only be admissible within the year immediately following the expiration of the unobserved time limit. In the case of non-payment of a renewal fee, the period specified in paragraph 2 of Article 120 will be deducted from the period of one year.</p> <p>(3) The application must state the grounds on which it is based, and must set out the facts and evidence on which it relies.</p>	<p>(1) +</p> <p>(2) +</p> <p>(3) +</p>	<p>(1) The applicant for or the proprietor of a European patent who is prevented by "force majeure" from observing a time limit imposed by the European Patent Office shall upon application, have his rights re-established, if the non-observance in question has the direct consequence, by virtue of the provisions of this Convention, of causing the refusal of the application for a patent, or of a request, or the loss of any other right or means of redress.</p> <p>(2) The application must be submitted within two months from the removal of the cause of non-compliance with the time limit. The omitted act must be completed within this period. The application shall only be admissible within the year immediately following the expiration of the unobserved time limit. In the case of non-payment of a renewal fee, the period specified in Article 120, paragraph 2, shall be deducted from the period of one year.</p> <p>(3) The application must state the grounds on which it is based, and must set out the facts on which it relies.</p>

Chairman's proposal

(1) The applicant who is prevented by force majeure from observing a time limit imposed by the European Patent Office shall, upon application, have his rights re-established if the non-observance in question has the direct consequence, by virtue of the provisions of this Convention, of causing the refusal of the European patent application, or of a request, or the deeming of the European patent application to have been withdrawn, or the loss of any other right or means of redress.

(2) +

(3) +

Note :

In paragraph 1 the re-establishment of former rights has been extended to cover the case of the fictitious arrangement, whereby the European patent application is deemed to have been withdrawn, as contained in the proposals for Article 78, paragraph 4 and Article 101, paragraph 1a. On account of this extension the German text of the second half of paragraph 1 has been re-drafted.

1962 Draft	EFTA Draft	1965 Draft
<p>(4) The authority competent to decide on the omitted act will decide upon the application. Any decision refusing an application must set out the grounds upon which it is based.</p>	<p>(4) +</p>	<p>(4) * The authority competent to decide on the omitted act shall decide upon the application. Any decision refusing an application must set out the grounds upon which it is based.</p>
<p>(5) The provisions of the present Article are not applicable to the time limits specified in Article 68, paragraphs 3 and 4, Article 72, paragraph 1, Article 74, paragraph 1, Article 80, paragraphs 4 and 5 and Article 88, paragraph 2.</p>	<p>(5) +</p>	<p>(5) * The provisions of the present Article shall not be applicable to the time limits specified in Article 68, paragraphs 3 and 4, Article 72, paragraph 1, Article 74, paragraph 1, Article 80, paragraphs 4 and Article 88, paragraph 2.</p>
<p>(6) Any person who, in a Contracting State, has, in good faith, in the course of the period between the lapse of a European patent and its restoration, exploited or made effective and serious preparations for exploiting the invention which is the subject of the patent, may freely continue such exploitation in the course of his business or for the needs thereof.</p>	<p>(6) +</p>	<p>(6) Any person who, in a Contracting State, has in good faith exploited or made effective and serious preparations for exploiting an invention which is the subject of a European patent in the course of the period between the lapse or effective cancellation of such European patent and notification of its restoration, may freely continue such exploitation in the course of his business or for the needs thereof.</p>

Chairman's proposal

(4) +

(5) The provisions of the present Article shall not be applicable to the time limits specified in Article 68b, paragraphs 1 and 2, Article 72, paragraph 1, Article 74, paragraph 1, Article 80, paragraphs 4 and 5, Article 88, paragraph 2 and Article 98, paragraph 4.

(6) Any person who, in a Contracting State, has in good faith exploited or made effective and serious preparations for exploiting an invention which is the subject of a published European patent application in the course of the period between the refusal of that European patent application or the date from which the European patent application has been deemed to have been withdrawn and notification of re-establishment of the applicant's rights, may freely continue such exploitation in the course of his business or for the needs thereof.

Note :

Paragraph 6 had to be adapted both to the amended objectives of the Convention and the amended procedure, as compared with the 1965 Draft. Accordingly it is proposed, on the one hand, that the right, granted by this paragraph, to continue exploiting an invention which is the subject of an application, should be restricted by excluding therefrom the case of the lapse and restoration of a European patent, since the regulation of this case would be left to the national jurisdictions. On the other hand, this provision should be extended in the sense that it is to apply as early as from the newly introduced publication of the patent application (Article 86a).

In addition, the case of the fictitious arrangement whereby the European patent application is deemed to have been withdrawn has also been incorporated. It is not the intention of this proposal to introduce any changes in the substance of paragraph 6.

Death of applicant or proprietor

1962 Draft	EFTA Draft	1965 Draft
<p>(1) If the applicant for or the proprietor of a European patent dies, and if his heirs cannot be located, the European Patent Office may, by public notice, invite the heirs to establish, within a reasonable time, their rights in respect of the application or the European Patent.</p> <p>(2) If no person establishes a right of succession within the due time, or if persons who have laid claim to the rights within such time fail to produce proof within a reasonable period, the application will be deemed to have been withdrawn or the patent to have lapsed.</p>	<p>(1) +</p> <p>(2) +</p>	<p>(1) If the applicant for or the proprietor of a European patent dies, and if his heirs cannot be located, the European Patent Office may, after a period of six months from death, by public notice invite the heirs to establish, within a reasonable time, their rights in respect of the European patent application or the European Patent.</p> <p>(2) * If no person establishes a right of succession within the due time, or if persons who have laid claim to the rights within such time fail to produce proof within a reasonable period, the European patent application shall be deemed to have been withdrawn or the European patent to have lapsed.</p>

Death of applicant or proprietor

Chairman's proposal

(1) If the applicant dies, and if his heirs cannot be located, the European Patent Office may, after a period of six months from his death, by public notice invite the heirs to establish, within a reasonable time, their rights in respect of the European patent application.

(2) If no person establishes a right of succession within the due time, or if persons who have laid claim to the rights within such time fail to produce proof within a reasonable period, the European patent application shall be deemed to have been withdrawn.

Mentioning of the inventor as such

1962 Draft	EFTA Draft	1965 Draft
<p>(1) If the applicant for or the proprietor of a European patent names the inventor to the European Patent Office, the person so named will be mentioned as inventor in the European Register of Patents, in the notice publishing the grant of the provisional European patent, and in that publishing the confirmation of this patent as a final European patent, and in the printed specification. The applicant for or the proprietor of the European patent may, at any time, amend the notification. The European Patent Office will not check the accuracy of the information given.</p> <p>(2) The provisions of paragraph 1 will not be applied when the inventor named by the applicant addresses to the European Patent Office a written renunciation of his title as inventor.</p> <p>(3) Paragraph 1 will apply similarly:</p> <p>(a) when a third party presents to the European Patent Office a final patent document from which it transpires that the applicant or proprietor is</p>	<p>(1) If the applicant for or the proprietor of a European patent names the inventor to the European Patent Office, the person so named will be mentioned as inventor in the European Register of Patents, in the notice publishing the grant of the European patent, and in that publishing the confirmation of this patent as final patents and in the printed specification. The applicant for or the proprietor of the European patent may, at any time, amend the notification. The European Patent Office will not check the accuracy of the information given.</p> <p>(2) +</p> <p>(3) +</p> <p>(a) +</p>	<p>- deleted; the provisions of this Article have been incorporated in the Implementing Regulations under Article</p>

Mentioning of the inventor as such

Chairman's proposal

- deleted -

Note :

The provisions of this Article should be incorporated in the Implementing Regulations under Article 17.

1962 Draft	EFTA Draft	1965 Draft
required to name such third party as inventor;		
(b) when a third party submits to the European Patent Office a request for rectification of the name of the inventor and supports it with the consent of the applicant or proprietor and of the person wrongly named, or produces evidence of a final judgment.	(b) +	
(4) Printed specifications will not be corrected after publication.	(4) +	

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Article 158a

Approval of the form of the patent by the proprietor

1962 Draft	EFTA Draft	1965 Draft
		<p>In the grant of the provisional European patent, the publication provided for in Article 96 and the confirmation of the provisional European patent, the European Patent Office shall be bound by the form proposed or accepted by the applicant for or proprietor of the patent.</p>

Article 158a

Approval of the form of the claims and of the patent

Chairman's proposal

The European Patent Office shall be bound,
in the publication provided for in Article 96
and in the grant of the European patent, by
the form proposed or accepted by the
applicant.

Article 159
Reference to general principles

1962 Draft	EFTA Draft	1965 Draft
In the absence of procedural provisions in the present Convention or the Implementing Regulations, the European Patent Office will take into account the principles of procedure generally practised in such matters in the Contracting States.	+	In the absence of procedural provisions in this Convention, the European Patent Office shall take into account the principles of procedural law commonly recognized in the Contracting States. In the absence of such common principles the European Patent Office shall draw upon the legislation of one or more Contracting States.

Article 159

Reference to general principles

Chairman's proposal

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CHAPTER II

ADMISSION OF PUBLIC, NOTIFICATIONS AND INSPECTION OF FILES

Article 160

Admission of public

1962 Draft	EFTA Draft	1965 Draft
<p>(1) Hearings before the Examining Sections, the Examining Divisions and the Patent Administration Divisions are not public.</p> <p>(2) Oral proceedings, including delivery of the decision, are public as regards the Boards of Appeal, after publication of a provisional European Patent; also before the Revocation Boards in the absence of any contrary decision of these Boards in cases where admission of the public would have serious disadvantages.</p>	<p>(1) +</p> <p>(2) Oral proceedings, including delivery of the decision, are public as regards the Boards of Appeal, after publication of a European Patent.</p>	<p>(1) * Hearings before the Examining Sections, the Examining Divisions and the Patent Administration Divisions shall <u>not</u> be public.</p> <p>(2) * Oral proceedings, including delivery of the decision, shall be public, as regards the Boards of Appeal, after publication of a provisional European Patent <u>and as regards the Revocation Boards, in so far as these Boards do not decide otherwise in cases where admission of the public would have serious disadvantages.</u></p>

CHAPTER II

ADMISSION OF PUBLIC, NOTIFICATIONS AND INSPECTION OF FILES

Article 160

Admission of public

Chairman's proposal

(1) Hearings before the Examining Sections and Examining Divisions shall not be public.

(2) Oral proceedings, including delivery of the decision, shall be public, as regards the Boards of Appeal and the enlarged Board of Appeal, after publication of the European patent application or of the claims, in so far as these Boards do not decide otherwise in cases where admission of the public would have serious disadvantages.

Article 161
Notifications

1962 Draft	EFTA Draft	1965 Draft
<p>The European Patent Office will, as a matter of course, notify those concerned of decisions and summons, and of any notice or other communication from which a time limit is reckoned, or of which those concerned must be notified under the present Convention or its Implementing Regulations, or by order of the President of the European Patent Office. Such notifications may be given through the intermediary of the central industrial property offices of the Contracting States.</p>	<p>+</p>	<p>The European Patent Office shall, as a matter of course, notify those concerned of decisions and summons, and of any notice or other communication from which a time limit is reckoned, or of which those concerned must be notified under the present Convention, or of which notification has been ordered by the President of the European Patent Office. Such notifications may, where necessary, be given through the intermediary of the central industrial property offices of the Contracting States.</p>

Article 161
Notifications

Chairman's proposal

+

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Article 162
Inspection of files

1962 Draft	EFTA Draft	1965 Draft
<p>(1) Before publication of the grant of a provisional European patent, the files relating to applications for European patents and to provisional European patents shall not be made available for inspection without the consent of the applicant for or the proprietor of the European patent.</p> <p>(2) After publication of the grant of a provisional European patent, or in the case specified in Article 117, paragraph 2, documents relating directly to the proceedings for grant, confirmation or revocation of a European patent may be inspected by any person upon request.</p> <p>(3) Inspection as referred to in the preceding paragraphs is subject to the payment of the fee prescribed by the Rules relating to fees adopted pursuant to this Convention.</p>	<p>(1) +</p> <p>(2) +</p> <p>(3) +</p>	<p>(1) The files relating to European patent applications or provisional European patents, in respect of which neither the publication provided for in Article 86a nor the publication of grant has been made, shall not be made available for inspection without the consent of the applicant for or proprietor of the patent.</p> <p>(2) After publication of the grant of a provisional European patent or, where applicable, after the publication provided for in Article 86a, or in the case specified in Article 117, paragraph 2, documents relating directly to the proceedings for grant, confirmation or revocation of a European patent may be inspected by any third party on request.</p> <p>(3) The inspection referred to in the preceding paragraphs shall be of the original documents or of copies thereof, and shall be subject to the payment of the fee prescribed by the Rules relating to fees adopted pursuant to this Convention.</p>

Article 162
Inspection of files

Chairman's proposal

(1) The files relating to European patent applications, which have not yet been published pursuant to Article 86a or Article 96, paragraph 3, shall not be made available for inspection without the consent of the applicant.

Note :

(2) After the publication provided for in Article 86a or Article 96, paragraph 3, / or in the case specified in Article 117, paragraph 2, / documents relating directly to the proceedings for grant of a European patent may be inspected by any third party on request.

(3) +

Paragraph 3 could be incorporated in the Implementing Regulations.

Article 163

Notification of objections raised by national authorities

1962 Draft	EFTA Draft	1965 Draft
<p>(1) The proprietor of a provisional European patent shall state, within a period to be determined, and upon request of an Examining Division or of a Board of Appeal, the States in which applications for national patents have been made for the whole or part of the invention which is the subject of the European patent, and to give the reference numbers of the said applications. He may likewise be required to state, within a period to be determined, any objections raised in the course of proceedings before the national authority and the decisions of such authority, insofar as such objections and decisions relate to the novelty of the invention.</p> <p>(2) The Examining Division or the Board of Appeal will cancel the provisional European patent if the proprietor of the said patent fails to comply with the requirements of paragraph 1.</p>	<p>(1) +</p> <p>(2) +</p>	<p>(1) <u>The proprietor of a provisional European patent shall indicate, upon request of an Examining Division or of a Board of Appeal, and within a period to be determined by these, the States in which applications for national patents have been made for the whole or part of the invention which is the subject of the European patent, and shall give the reference numbers of the said applications.</u></p> <p>(2)*<u>The Examining Division or the Board of Appeal shall cancel the provisional European patent if the proprietor of the said patent fails to comply with the requirements of paragraph 1.</u></p>

Article 163

Notification of objections raised by national authorities

Chairman's proposal

(1) The applicant shall indicate, upon request of an Examining Division or of a Board of Appeal, and within a period to be determined by these, the States in which applications for national patents have been made for the whole or part of the invention which is the subject of the European patent application, and shall give the reference numbers of the said applications.

(2) If the applicant fails to comply with the requirements of paragraph 1, the European patent application shall be refused.

CHAPTER III
COSTS AND THEIR ENFORCEMENT

Article 164

Costs in examination proceedings

1962 Draft	EFTA Draft	1965 Draft
<p>(1) Each party to proceedings for the grant or examination of a provisional European patent must meet the costs he has incurred, unless a decision of an Examining Section or Division orders an equitable apportionment of costs incurred in hearing the parties, or during a preliminary investigation.</p> <p>(2) Apportionment of costs will be dealt with in the decision relating to the grant or to the confirmation of a provisional European patent. It can similarly be dealt with when an application for a patent is withdrawn, or when a provisional European patent lapses.</p> <p>(3) The apportionment of costs, including the remuneration of representatives of the parties, shall be limited to the expenses necessary to assure proper protection of the rights involved.</p> <p>(4) Upon request, an Examining Section will tax costs to be paid under a decision apportioning them. A bill of costs, with</p>	<p>(1) +</p> <p>(2) +</p> <p>(3) +</p> <p>(4) +</p>	<p>(1) * Each party to proceedings for the grant <u>or examination of a provisional European patent shall meet the costs he has incurred, unless a decision of an Examining Section or Examining Division orders an equitable apportionment of costs incurred in hearing the parties or during a preliminary investigation.</u></p> <p>(2) * Apportionment of costs shall be dealt with in the decision relating to the grant <u>or to the confirmation of a provisional European patent. It may also be dealt with when an application for a patent is withdrawn, or when a provisional European patent lapses.</u></p> <p>(3) * The apportionment of costs, including the remuneration of representatives of the parties, shall be limited to the expenses necessary to assure proper protection of the rights involved.</p> <p>(4) * Upon request, an Examining Section shall tax costs to be paid under a decision apportioning them. A bill of costs, with</p>

CHAPTER III
COSTS AND THEIR ENFORCEMENT

Article 164

Costs in examination proceedings

Chairman's proposal

(1) Each party to proceedings for the grant of a European patent shall meet the costs he has incurred, unless a decision of an Examining Section or Examining Division orders an equitable apportionment of costs incurred in hearing the parties or during a preliminary investigation.

(2) Apportionment of costs shall be dealt with in the decision relating to the grant of a European patent. It may also be dealt with when an application for a patent is withdrawn or deemed to have been withdrawn.

(3) +

(4) +

Article 164 (contd.)

-2-

1962 Draft	EFTA Draft	1965 Draft
supporting evidence, shall be attached to the request. The request will only be admissible if the decision in respect of which the taxing of costs is required is a final one. Costs may be taxed once their credibility is established.		supporting evidence, shall be attached to the request. The request shall only be admissible if the decision in respect of which the taxing of costs is required is a final one. Costs may be taxed once their credibility is established.

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Article 165

Costs in proceedings on appeal

1962 Draft	EFTA Draft	1965 Draft
<p>(1) Each party proceeding on appeal must meet the costs he has incurred unless a decision of a Board of Appeal orders an equitable apportionment of costs, other than fees prescribed by the Rules relating to fees under the Convention.</p>	<p>(1) +</p>	<p>(1) Each party proceeding on appeal shall meet the costs he has incurred unless a decision of a Board of Appeal orders an equitable apportionment of costs, including the appeal fee, but excluding any other fees prescribed by the Rules relating to fees adopted pursuant to this Convention.</p>
<p>(2) Apportionment of costs will be dealt with in the decision on the appeal. It can similarly be dealt with when an application for a European patent or the appeal has been withdrawn, or when the provisional European patent lapses.</p>	<p>(2) +</p>	<p>(2) * Apportionment of costs shall be dealt with in the decision on the appeal. It may also be dealt with when a patent application or an appeal is withdrawn, or when a <u>provisional European patent lapses</u>.</p>
<p>(3) The provisions of Article 164, paragraphs 3 and 4 are applicable to costs in appeal proceedings.</p>	<p>(3) +</p>	<p>(3) * The provisions of Article 164, paragraphs 3 and 4, shall apply.</p>

Article 165

Costs in proceedings on appeal

Chairman's proposal

(1) +

(2) Apportionment of costs shall be dealt with in the decision on the appeal. It may also be dealt with when a patent application or an appeal is withdrawn, or when a patent application is deemed to have been withdrawn.

(3) +

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Article 166

Costs in proceedings for the grant of compulsory licences

Article 167

Costs in revocation proceedings

Article 168

Costs in proceedings for a declaratory judgement

Chairman's proposal : deleted

Article 169

Assistance

Chairman's proposal

See next page.

1962 Draft	EFTA Draft	1965 Draft
<p>payment. However, when the applicant establishes within the said period that he has applied for the certificate from the competent authority, the period will be extended by three months. If the certificate is not submitted within the extended period of three months, the extension will be deemed to have been refused.</p> <p>(4) The competent authority of a Contracting State will only issue certificates to physical persons who are nationals of said State or ordinarily resident on its territory.</p> <p>(5) The fees and other expenses from which an applicant secures exemption will be reimbursed to the European Patent Office by the Contracting State whose competent authority issued the certificate.</p> <p>(6) Contracting States are not bound to issue the certificates provided for by this Article.</p>	<p>(4) +</p> <p>(5) +</p> <p>(6) +</p>	
<p><u>2nd Variant</u></p> <p>Contracting States may take any measure designed to assist applicants for and proprietors of European patents and parties to proceedings for the revocation of final European Patents in respect of the payment</p>	<p><u>2nd Variant</u></p> <p>Contracting States may take any measures designed to assist applicants for and proprietors of European patents</p>	<p>The Contracting States shall have the right to take any measures to assist applicants for and proprietors of European patents and parties to proceedings for the revocation of final European patents</p>

Chairman's proposal

The Contracting States shall have the right to take any measures to assist applicants in respect of the payment of fees, other than application fees, and of other costs of the proceedings, in so far as such persons are not in a position to pay them,

Note :
The Chairman's proposal extends the provisions relating to assistance to cover renewal fees. This takes into account the Chairman's proposal in respect of Article 122, in accordance with which

Article 169 (contd.)

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1962 Draft	EFTA Draft	1965 Draft
<p>of fees, other than application fees and renewal fees, and for the payment of other costs of proceedings, in so far as such persons are not in a position to pay them, owing to insufficient means. These measures can only be taken in favour of physical persons who are nationals of the State concerned, or ordinarily resident on its territory.</p>	<p>in respect of the payment of fees, other than application fee and renewal fees, and for the payment of other costs of proceedings, in so far as such persons are not in a position to pay them, owing to insufficient means. These measures can only be taken in favour of physical persons who are nationals of the State concerned, or ordinarily resident on its territory.</p>	<p>in respect of the payment of fees, other than application fees and renewal fees, and of other costs of the proceedings, in so far as such persons are not in a position to pay them, owing to insufficient means.</p>

Chairman's proposal

owing to insufficient means.

the grant of supplementary extensions of time for the payment of renewal fees would be abandoned. Should the Working Party decide, contrary to the Chairman's proposal for Article 122, to provide for supplementary extensions of time for the payment of renewal fees, these fees would have to be excluded once more from the granting of assistance in the present Article 169.

Article 170

Enforcement of costs and fines

1962 Draft	EFTA Draft	1965 Draft
<p>(1) Decisions of the European Patent Office taxing costs of proceedings, imposing a fine, or establishing failure to pay renewal fees within the meaning of Article 123, are themselves enforceable; this provision does not apply to States.</p> <p>(2) Enforcement shall be regulated by the rules of civil procedure in the Contracting State in whose territory the enforcement takes place. The enforcement order will be issued, without further requirement other than that of the authenticity of the document, by the national authority which the government of each of the Contracting States will designate for this purpose, and of which the European Patent Office shall be informed.</p> <p>(3) After the completion of these formalities at the request of the interested party, the latter may levy distraint by direct application to the competent authority in accordance with national law.</p>	<p>(1) +</p> <p>(2) +</p> <p>(3) +</p>	<p>(1) Decisions of the European Patent Office taxing costs of proceedings, imposing a fine, or establishing failure to pay fees, are themselves enforceable ; this provision shall not apply to States.</p> <p>(2) * Enforcement shall be regulated by the rules of civil procedure in the Contracting State in whose territory the enforcement takes place. The enforcement order shall be issued, without further requirement other than that of the authenticity of the document, by the national authority which the government of each of the Contracting States shall designate for this purpose, and of which the European Patent Office shall be informed.</p> <p>(3) * After the completion of these formalities at the request of the interested party, the latter may levy distraint by direct application to the competent authority in accordance with national law.</p>

Article 170
Enforcement of costs and fines

Chairman's proposal

(1) +

(2) +

(3) +

Article 170 (contd.)

-2-

1962 Draft	EFTA Draft	1965 Draft
(4) Enforcement can only be stayed by a decision of the European Patent Office or the European Patent Court. However, national courts shall be competent to investigate the validity of such enforcement measures.	(4) +	(4) - deleted -

Chairman's proposal

(1) - deleted -

CHAPTER IV

REPRESENTATION

Article 171

Professional patent agents

1962 Draft	EFTA Draft	1965 Draft
<p>(1) Representation of natural and legal persons in proceedings before the European Patent Office can only be undertaken by natural persons whose names appear in the list maintained for this purpose by the said Office.</p> <p>(2) Any person having his registered place of business within the territory of one of the Contracting States and who, according to a certificate furnished by the central industrial property office of one of such States, is entitled to act as a professional patent agent before that office, may be entered in the list. Entry is effected upon request, accompanied by the certificate referred to above, which must specify the extent of such entitlement.</p> <p>(3) When, in a Contracting State, the qualification to act as an agent is not conditional upon the requirement of special professional qualifications, persons who act as agents before the central industrial property office of the said State must have habitually acted as such for at least five years. In such cases, the certificate</p>	<p>(1) +</p> <p>(2) +</p> <p>(3) +</p>	<p>(1) * Representation of natural and legal persons in proceedings before the European Patent Office may only be undertaken by natural persons whose names appear in a list maintained for this purpose by the said Office.</p> <p>(2) * Any person having his registered place of business within the territory of one of the Contracting States, and who, according to a certificate furnished by the central industrial property office of one of such States, is entitled to act as a professional patent agent before that office, may be entered in the list. Entry is effected upon request, accompanied by the certificate referred to above, which must specify the extent of such entitlement.</p> <p>(3) * When, in a Contracting State, the qualification to act as an agent is not conditional upon the requirement of special professional qualifications, persons who act as agents before the central industrial property office of the said State must have habitually acted as such for at least five years. In such cases, the certificate</p>

CHAPTER IV
REPRESENTATION
Article 171
Professional patent agents

Chairman's proposal

(1) +

(2) +

(3) +

Article 171 (contd.)

-2-

1962 Draft	EFTA Draft	1965 Draft
<p>specified in the preceding paragraph must indicate that the applicant satisfies this requirement.</p> <p>(4) Agents whose names are entered on the list referred to in paragraph 1 may only act before the European Patent Office to the extent that they are entitled, within the terms of the certificate referred to in paragraph 2, to act as patent agents in the Contracting State in which they exercise their profession.</p> <p>(5) Representation before the European Patent Office may be undertaken by any lawyer called to the Bar in one of the Contracting States, and having his professional office within such State, to the extent that he is able, within the said State, to act as a representative in patent matters.</p>	<p>(4) +</p> <p>(5) +</p>	<p>specified in the preceding paragraph must indicate that the applicant satisfies this requirement.</p> <p>(4) * Agents whose names are entered on the list referred to in paragraph 1 may only act before the European Patent Office to the extent that they are entitled, within the terms of the certificate referred to in paragraph 2, to act as patent agents in the Contracting State in which they exercise their profession.</p> <p>(5) * Representation before the European Patent Office may be undertaken by any lawyer called to the Bar in one of the Contracting States, and having his professional office within such State, to the extent that he is able, within the said State, to act as a representative in patent matters.</p>

Chairman's proposal

(4) +

(5) +

Article 172

Compulsory representation

1962 Draft	EFTA Draft	1965 Draft
<p>(1) Subject to the provisions of the following paragraphs, no person is compelled to be represented before the European Patent Office.</p> <p>(2) Natural and legal persons who have neither a place of business nor residence within the territory of one of the Contracting States must be represented in all proceedings before the European Patent Office by a patent agent. Upon conclusion of the proceedings, the authority of the patent agent to receive all communications concerning the patent, shall be legally maintained, unless the proprietor of the European patent has acquired an address for service within the territory of one of the Contracting States.</p> <p>(3) Applications for patents, requests and appeals by persons referred to in paragraph 2 can only be lodged through a patent agent. Failure to observe this requirement will result in the application for a patent, the request, or the appeal being deemed not to have been made.</p> <p>(4) The patent agent referred to in paragraph 2 will be entered in the Register of European Patents. Any agent so entered and who ceases to be authorised will continue to be regarded as the patent agent for such time as his name remains entered on the Register.</p>	<p>(1) +</p> <p>(2) +</p> <p>(3) +</p> <p>(4) +</p>	<p>(1) * Subject to the provisions of the following paragraphs, no person shall be compelled to be represented before the European Patent Office.</p> <p>(2) * Natural and legal persons who have neither a registered place of business nor residence within the territory of one of the Contracting States must be represented in all proceedings before the European Patent Office by a patent agent. <u>Upon conclusion of the proceedings, the authority of the patent agent to receive all communications concerning the patent shall be legally maintained, unless the proprietor of the European patent has acquired an address for service within the territory of one of the Contracting States.</u></p> <p>(3) * Applications for patents, requests and appeals by persons referred to in paragraph 2 may only be lodged through a patent agent. Failure to observe this requirement shall result in the application for a patent, the request or the appeal being deemed not to have been made.</p> <p>(4) * The patent agent referred to in paragraph 2 shall be entered in the Register of European Patents. Any agent so entered and who ceases to be authorised shall <u>continue to</u> be regarded as the patent agent for such time as his name remains entered on the Register.</p>

Compulsory representation

Chairman's proposal

(1) +

Note :

(2) Natural and legal persons who have neither a registered place of business nor residence within the territory of one of the Contracting States must be represented in all proceedings before the European Patent Office by a patent agent.

(3) Applications, objections, requests and appeals by persons referred to in paragraph 2 may only be lodged through a patent agent. Failure to observe this requirement shall result in the application, the objection, the request or the appeal being deemed not to have been made.

(4) The patent agent for an applicant, as referred to in paragraph 2, shall be entered in the Register of European Patents. Any agent so entered who ceases to be authorised shall be regarded as the patent agent up to the grant of the European patent, for such time as his name remains entered in the Register.

The words "for an applicant" have been inserted for the sake of clarity, as it is to be assumed that it was not the intention of the 1965 Draft, either, that the agent of an objector or other interested party should be entered in the Register of European patents.

Article 173
Authorisations

1962 Draft	EFTA Draft	1965 Draft
<p>(1) Patent agents acting as such before the European Patent Office must produce an authorisation in writing.</p> <p>(2) If several agents are authorised they may, notwithstanding any contrary provisions in the authorisation, act either jointly or individually.</p> <p>(3) Unless an authorisation contains provision to the contrary, it will not terminate upon the death of the person who issued it.</p>	<p>(1) +</p> <p>(2) +</p> <p>(3) +</p>	<p>(1) * Patent agents acting as such before the European Patent Office must produce an authorisation in writing.</p> <p>(2) * If several agents are authorised, they may, notwithstanding any contrary provisions in the authorisation, act either jointly or individually.</p> <p>(3) * Unless an authorisation contains a provision to the contrary, it shall not terminate upon the death of the person who issued it.</p>

Article 173
Authorisations

Chairman's proposal

(1) +

(2) +

(3) +

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PART X

PROCEDURE IN INFRINGEMENT AND OTHER CIVIL PROCEEDINGS

Articles 174 to 184
but excluding Article 180

Chairman's proposal : deleted

Article 180

Opinion by the European Patent Office

1962 Draft	EFTA Draft	1965 Draft
At the request of the competent national court to which the infringement action has been referred, the European Patent Office shall be obliged to produce a technical opinion concerning the final European patent in question.	At the request of the competent national court to which the infringement action has been referred, the European Patent Office shall be obliged to produce a technical opinion concerning the final patent in question.	* At the request of the competent national court to which the infringement action has been referred, the European Patent Office shall be obliged to produce a technical opinion concerning the European patent in question.

Article 180

Opinion by the European Patent Office

Chairman's proposal

On the basis of a decision of the competent national court to which the infringement action has been referred, the European Patent Office shall be obliged to produce a technical opinion concerning the European patent in question.

BR/GT I/10 e/69 mk

PART XI
TRANSITIONAL PROVISIONS

Articles 185 to 205

PART XII
FINAL PROVISIONS
Articles 206 to 217

Chairman's proposal : deferred

