

BR/GT I/41 e/70

Travaux Préparatoires EPC 1973

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- Secretariat -

MINUTES

of the meeting of Working Party I

(Luxembourg, 1 - 3 April 1970)

I

Opening of the meeting and adoption of the provisional agenda

1. The fourth working meeting of Working Party I was held at Luxembourg from Wednesday 1 to Friday 3 April 1970, with Dr. HAERTEL, President of the German Patent Office, in the Chair.

The Commission of the European Communities, EIRPI and the International Patent Institute (IIB) took part in the meeting (1). The representative of the General Secretariat of the Council of Europe sent his apologies for being unable to attend.

The Chairman submitted the provisional agenda contained in Annex II to the Working Party, which adopted it subject to the inclusion of one further item under "Other business" (see point 51 below).

(1) See Annex I for list of those attending the meeting of the Working Party.

2. The Drafting Committee held meetings daily, after the meeting of the Working Party, to draw up the recommendations referred to in part II below. In the absence of Mr. VAN BENTHEM, who was unable to attend, the Drafting Committee met under the Chairmanship of Mr. FRESSONNET.

II

Drafting of recommendations for the attention of Working Party IV

3. With a view to fulfilling the mandate given to Working Party I by the Conference at its meeting of 13 December 1970, the Chairman laid before it a paper setting forth guidelines for financial planning for the European Patent Office [doc. BR/GT I/34/70 and Annexes 7]. For the purposes of future work, this document has been re-issued under reference BR/GT I/59/70.
4. Working Party I worked on the assumption that it would be appropriate - in view of the fact that this paper was to be submitted to the delegations to Working Party IV - to draw up a certain number of recommendations, based on considerations in the patents field, for that Working Party's attention, thus providing it with a basis on which to carry out the mandate it had received from the Conference at the above-mentioned meeting. In this context, Working Party I considered that it was not for it to lay down estimates for the expenditure and revenue of the EPO there and then. Its main concern was to assess whether the minimum and maximum assumptions adopted for the preparation of these estimates would be acceptable at the present stage for the purposes of the studies to be carried out by Working Party IV.

5. When drawing up its recommendations, the Working Party referred to the list of questions on page 42 et seq. of the Chairman's paper.

The recommendations adopted during the Working Party's meeting are to be found in BR/GT I/40/70.

A. Number of applications expected to be filed with the European Patent Office

6. The Working Party adopted the "three States theory" for the purposes of estimating the number of applications likely to be filed with a European Patent Office coming into full operation in 1975. This was in contrast to the fact that the "two States theory" had been adopted as a basis for estimates of the number of applications in the course of work undertaken by the six Member States of the Communities in 1962-1965.

A number of delegations questioned whether, in view of the fact that the number of Contracting States to the present Convention was considerably higher than that of the States which would have been parties to the Convention in 1962, the adoption of the three States theory instead of the two States theory was fully justified.

It was, however, pointed out in this connection that the three States theory appeared to be sufficiently realistic, in that it assumed that applicants would still have a choice between the European procedure and national procedures. It was also observed that the figure for applications obtained under the two States theory did not differ markedly

from that obtained by applying the three States theory.

The Working Party therefore concluded that the figure of 40,000 applications adopted as a basis for estimates of the expenditure and revenue of the EPO appeared to be a realistic, albeit conservative estimate.

B. Number of examiners required to process these applications

7. The Working Party discussed the significant figures determining the number of examiners required to process the applications, i.e. the number of applications resulting in a request for examination and the number of granted patents giving rise to opposition proceedings. The Working Party also examined each of the following assumptions :
deferred examination with a seven-year request period and
deferred examination with a two-year request period.
(Annex 2, page 1).

8. In the case of deferred examination with a seven-year request period, the Working Party assumed for the purposes of the estimate that out of 100 patent applications, 52 would lead to a request for examination; of these, 40 would lead to the grant of a patent. 10 of these 40 patents would give rise to opposition proceedings, and 35 applications would eventually result in European patents.

The Working Party adopted this series of figures for the reasons set out below. In the first place, there did not seem to be any decisive reasons to alter a series of estimates adopted in 1962. Secondly, it having been

pointed out that the figures adopted for the number of requests for examination and for the number of patents finally granted appeared to be somewhat high in the light of experience in the various countries, the Working Party nevertheless felt that such national experience could not be accepted without adjustment for the purposes of the European procedure, since it considered that applications submitted to the EPO would in principle be sounder than those filed with national patent offices. Finally, the Working Party thought that it would be prudent to avoid underestimating the number of requests for examination, since this figure would be of decisive importance for estimating the number of examiners required.

As regards the figure for applications finally resulting in the grant of a European patent, the Working Party considered that, both for reasons of expediency as regards the interested circles, and in order to obtain a reasonable basis for the number of patents giving rise to the levying of renewal fees, which would be the main source of the EPO's funds, the figure of 35 patents was a prudent estimate.

9. In the case of a deferred examination with a two-year request period, certain amendments were made to the figures in the Chairman's paper (see Annex 2, page 1), the figure of 6 % for the number of applications leading to a request for examination being increased to 10 %.

The Working Party was faced with the difficulty of estimating what effect the change from a system of deferred examination with a period of seven years within which requests for examination could be made, to one where that request period was two years, might have upon the number of applications dropped, for economic reasons, during this

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short period - abandoned, in other words, owing to lack of interest on the part of the applicant in continuing the procedure for an application which was clearly no longer economically viable.

The Working Party considered that the figure of 10 % seemed more realistic than that of 6 %, in that applicants would have access to the report on the state of the art and would be able to reach a swift decision as to their economic interest in upholding an application. The amended Annexes, based on the assumption referred to in this paragraph, are attached to the Working Party's recommendations BR/GT I/40/707.

The Swedish delegation expressed a reservation regarding the figure of 72 applications which, on the assumption adopted by the Working Party, would lead to a request for examination. In the light of experience in their own country, this delegation thought that a figure of 60 requests for examination would be more realistic. The delegation pointed out that most applications filed in their country were of foreign origin and can thus be regarded as comparable in quality to those which would be submitted to the EPO. The proportion of 40 % of applications not giving rise to a request for examination applies after applicants have received a preliminary report from the Swedish Patent Office.

The Swedish delegation was invited to further explain, by means of a paper, with supporting statistics, to be made available to Working Party IV, the reasons leading them to put forward the figure of 60 applications leading to a request for examination. It was however pointed out that Working Party IV would have to take due account of the differences between the report on the state of the art drawn up by the

International Patent Institute and the preliminary report of the Swedish Patent Office, so as to ensure strict comparability of data.

10. The Working Party raised the issue of the possible effects of introducing a "seven-year" deferred examination upon the number of applications submitted to the EPO, in relation to what would obtain with a two-year request period. In this connection, it was pointed out by those countries in which a seven-year request period obtains that the growth rate in the number of patent applications filed with their respective Offices had followed a normal trend as compared with the previous situation.
11. The Working Party amended the figures put forward in the Chairman's paper (Annex 2, page 2), for the calculation of the working time necessary for the various stages of procedure for grant, the following figures being adopted :
 - 0.1 working days for examination for obvious deficiencies;
 - 2.7 working days for examination for novelty;
 - 5 working days for examination of opposition.

Taking the above data and allowing a 7 % safety margin to cover interruptions and time spent by EPO examiners on the instruction of trainee examiners, the Working Party arrived at the figures of 390 examiners for a seven-year request period, and 534 examiners for a two-year request period.

It was requested that Working Party IV should, if necessary, draw up assumptions on the basis of a 10 %

figure instead of the 7 % at present adopted. In addition, it was noted that the figures for the number of examiners adopted by the Working Party made no allowance for the Chairmen of Examining Divisions.

C. Total number of European Patent Office staff

12. For the purposes of the total numbers and grading of the European Patent Office staff, Working Party I adopted the figures given in Annex 3 for the total staff complement on the basis of 390 examiners. The Working Party understood that these figures had been adopted as a guide and that Annex 3 did not prejudice the precise structure of the EPO establishment plan. Without stating its opinion on the distribution of certain posts (in particular as regards the number of secretaries in the typing pool), the Working Party nevertheless deemed it useful to retain the figures given in Annex 3 in order to have an adequate basis for calculating the expenditure of the EPO.

13. Working Party I agreed that calculations similar to those undertaken in Annex 3 should be made by Working Party IV, for the case of deferred examination with a two-year request period. For this, Working Party IV could make the necessary extrapolations on the basis of Annex 3, assuming an additional requirement of 144 examiners. Working Party I believed that, for the case of deferred examination with a two-year request period, it would perhaps not be appropriate simply to adopt a proportional calculation for the number of officials other than examiners, since it was not evident a priori that an

additional number of examiners automatically implied a corresponding increase in the total-number of EPO staff. The Working Party considered, however, that, should deferred examination with a two-year request period be adopted, the minimum additional staff to be expected would be 300 officials. It has in fact been noted that each additional examiner would necessitate the recruitment of one member of the supporting staff (i.e. $144 \times 2 = 288$) and there would also be a certain number of administrative staff required.

Working Party I was of the opinion that it would be sufficient at the present stage to estimate the total staff complement of the EPO for the two extreme cases of deferred examination with a two-year request period and with a seven-year request period, and that it was not necessary to invite Working Party IV to draw up estimates for an intermediate case. It was believed that, should an intermediate period finally be adopted, it would be possible to work out a sufficiently accurate order of magnitude for such a period from the minimum and maximum assumptions.

D. Grading of staff - Salaries

14. The Working Party agreed that Working Party IV could make use of Annexes 4 to 9, which contain data on the basis of which expenditure can be estimated. However, Working Party IV could also draw on other comparative data, particularly as regards salary scales.

The representative of the IIB pointed out that the salaries shown in Annex 8 were comparable to those under the IIB salary scales. This Annex in particular in no way

prejudges the conclusions to be reached by Working Party III.

Working Party I noted that the salary scales for EPO examiners should in any case be higher than those applied in the national patent office of the Contracting State which has the highest salary scales.

15. As regards the examination of these Annexes, it was understood that expenditure on account of the special organs under the second Convention and the staff allocated to those organs should be wholly covered by resources (fees or, where applicable, contributions) deriving solely from the Contracting States to the second Convention.
16. The British delegation recalled its earlier proposal regarding Branch Examining Offices and noted that such a proposal was very likely to have financial implications, in particular in view of the fact that, for the majority of the staff, there would be no need to provide for expatriation allowances in this event. Of course, other items of expenditure might be increased if such a proposal were adopted. The Working Party noted that the basic assumptions contained in the Annexes in question did not prejudice the reply which would finally be made to the British delegation's proposal, but that at the next meeting of Working Party I, when this proposal was to be examined, it would be necessary to have considered the financial aspects of this proposal as well as the general organisational aspects.

E. Recurring expenditure of the European Patent Office

17. On the subject of Annex 10, the Working Party noted that the item in Chapter IX of Title II should provide for a credit of \$20,000 for training expenses, so that the figure of \$2,866,000 appearing on pages 2 and 10 of that Annex should be increased to \$2,886,000.
18. In addition, and without taking any decision as to the amount of the fees for publishing applications and specifications or as to the selling price or subscription rates for the Official Journal and the European Patent Bulletin, the Working Party assumed that this expenditure should be shown only as a token entry in Chapter X, because the cost of printing patent specifications will be wholly covered by publication fees and sales of these publications and because the cost of publishing the Official Journal and the European Patent Bulletin should in principle be wholly covered by proceeds from their sale.

F. Estimate of the revenue of the European Patent Office

(a) Procedural fees and renewal fees

19. The Working Party examined the table in Annex 11, which divides the fees provided for under the Draft Convention into three groups. Certain delegations wondered whether there was any justification for providing for a group of fees which would be "neutral" as regards the estimate of the revenue of the EPO (cf. in particular the comments under points 22 and 25 below, on the fee for the report on the state of the art).

At the present stage the Working Party adopted Annexes 11 to 18 for use by Working Party IV as a working basis for its calculations. It was understood in this connection that the figures given for procedural fees and for renewal fees would not prejudice the final amounts adopted when the Rules relating to fees are drawn up.

In addition, Working Party I will later have to examine the relation to be finally laid down between the total amount of procedural fees and that of renewal fees for applications. In view of these various considerations, the Working Party provisionally adopted the figures shown in Annex 12 for study by Working Party IV. It rejected, at the present stage, a suggestion that the opposition fee should be \$50 rather than \$25.

20. The Working Party adopted the scale of renewal fees for European patent applications shown in Annex 16 and specifically that for year 1 to year 10, and indicated its agreement for the present to the progressive nature of these fees from year 1 to year 10. The Working Party was of the opinion that, for reasons of expediency, it was not necessary for Working Party IV to make estimates for the period running from the 11th year from the filing of the application. Furthermore, it appeared that the number of patent applications continuing as such at that stage in the procedure for grant before the EPO would be very small and that, consequently, the effect of the fees levied in respect of such applications on the revenue of the EPO would be negligible.

Secondly, Working Party I did not decide as to whether the annual fees should be levied according to a progressive or a fixed scale after the 11th year.

In addition, the Working Party provisionally adopted the principle whereby renewal fees for applications would be set at a fixed level, irrespective of the number of States designated in an application - and, correspondingly, of the size of these States - as had been suggested to it.

21. Having noted that the estimate of revenue given in Annex 18 had been based on the assumption of "seven-year deferred examination" the Working Party invited Working Party IV to draw up corresponding tables for Annexes 14, 17 and 18 based on the assumption of a two-year request period (1).

(1) Account will have to be taken of the fact that the figures given in Annexes 17 and 18 include applications for patents of addition, which do not give rise to the payment of renewal fees.

(b) Fees for the report on the state of the art

22. The Working Party examined whether, and how, the fee for the report on the state of the art prepared by the IIB could be made less than the price charged for this by the IIB, the difference being spread over other fees.

It was pointed out in this connection that the question arises from the fact that applications for European patents may be filed with the EPO via an international application under the PCT, accompanied by a preliminary examination report drawn up by an International Searching Authority which would not charge the whole of the cost of drawing up such a report, being able to draw on renewal fees to balance its accounts, which the IIB cannot do. The latter is consequently obliged to charge an amount which covers all the expenses incurred in drawing up its reports.

23. Without taking any decision on the solution to be finally found for this problem, the Working Party noted that if the fee charged by the EPO for the report on the state of the art were to be less than the price charged for this by the IIB, the resulting difference could only be compensated in the following two ways, or possibly by a

a combination of these: (i) increasing the procedural fees directly levied by the EPO by an appropriate amount, or (ii) taking an appropriate amount from renewal fees. However, it was noted that if it were to be agreed that this difference should be made up by raising the procedural fees, this could only apply to the filing fee, since a number of applications would be dropped in the subsequent procedure before the EPO.

As regards renewal fees, the Working Party noted that the required compensation could hardly be obtained from renewal fees for applications, and that it would therefore only be possible to envisage a corresponding levy on the renewal fees charged by the national offices for European patents.

The Working Party did not decide on the percentage of the fee for the report on the state of the art which could be recovered from the procedural fees or the renewal fees for applications or renewal fees for patents. It left it to Working Party IV to propose an appropriate percentage, in the light of a paper with supporting statistics, to be drawn up by the French Delegation which will, in particular, take into account the charge adopted for the report on the state of the art by the IIB.

(c) Designation fees

24. Faced with the question whether designation fees should be allocated directly to the EPO or to the Contracting States, the Working Party considered that these fees should be allocated to the EPO.
25. For the designation fee, the Working Party provisionally adopted the amount at present laid down in the PCT draft, which is \$12.
26. The Working Party discussed how many designation fees a European application could entail, in view of the fact that European patent applications may be filed directly with the EPO or via the PCT route. The Working Party was of the opinion that, for the present, Working Party IV could assume that a European application would entail as many designation fees as there were Contracting States designated in the application. On this assumption, and to facilitate calculation, no account would be taken of any effect which a designation fee already paid under the PCT procedure would have on a European application. To this end, the Working Party adopted Annex 23.
27. To estimate the probable number of designation fees, the Working Party had to decide whether one or six designation fees would be levied for the unitary patent established under the second Convention, which obliges applicants to designate the six Member States as a whole. The Working Party did not take a final decision on this question, which will first have to be examined at the

level of the six Member States which are drafting the second Convention. The Conference will have to discuss this question.

28. On the basis of Annex 23, the Working Party finally examined the expected frequency of designation of Contracting States the Chairman's Paper having concluded that 7.8 Contracting States would on average be designated in each European application.

The representative of BIRPI supported the conclusions of this Paper, indicating that his organisation had reached the conclusion that on average 7 Contracting States would be designated in each international application.

The Working Party believed that a certain amount of care should be taken in making such estimates, it having been observed in particular that the attitude of applicants with regard to making use, or not making use, of the priority right attached to a national application might have a certain influence in this matter. With this in mind, the Working Party felt that it might be preferable not to take account of the designation of a particular Contracting State by applicants who were nationals of that State.

The Working Party decided that, to evaluate the income from designation fees, Working Party IV could take the following figures into consideration: the total of the figures in column 4, i.e. 77,958; the figure of 12,678 given in column 2 (a); the figure of 20,000 given in column 4 (a). The total of these figures is 109,636 which, when increased by 11.2 %, gives a total of about 120,000 designations, i.e. an average of 3 designations per application, on the assumption that only one designation fee would be levied to cover all the States participating in the second Convention

as a whole. Working Party IV could also carry out calculations on the assumption that designation of the States participating in the second Convention would automatically entail the levying of six designation fees, in which case the designation factor given earlier should be changed to 7.6.

G. Outline budget for the European Patent Office

29. Examination of Annex 19 raised the question of the form in which the budget of the EPO should be presented in the future, having regard to the revenue and expenditure falling specifically to the Contracting States to the second Convention.

It was agreed that, since the EPO budget must constitute a whole, it would be for Working Party IV to examine by what procedure the part of the budget relating to the organs responsible for implementing the second Convention should first be approved by the Select Committee of the Administrative Council which is responsible for supervising the implementation of the second Convention, before being submitted for approval by the Administrative Council provided for by the first Convention.

It was also noted that the EPO budget must at some point include the fees described as "neutral" in Annex 11.

H. Revenue and expenditure of the European Patent Office with immediate full opening or progressive build-up (Annexes 20 to 22)

30. Working Party I agreed that it would be advisable for Working Party IV to examine the structure of the EPO's

revenue and expenditure on the assumption of immediate opening in every area of technology on one hand, and on the assumption of a progressive build-up of its activities on the other hand.

31. In the latter case, Working Party I considered that, in order to avoid multiplying the possible variants, Working Party IV should take as its basis the schedule envisaged in Annex 21, under which the EPO would be extended progressively, in five steps, in accordance with the percentages indicated in that Annex, to the various areas of technology.
32. As regards the cases selected by the Chairman in Annexes 20 and 22, it was pointed out that the deferred examination procedure could make it unnecessary to have a very large number of examiners on the opening of the EPO. In neither case would it be necessary to have the total number envisaged in the preceding Annexes, so that, according to a calculation made by one delegation, the budget deficit to be covered up to year 8, in the case of immediate full opening, could be \$45,000,000 instead of \$80,673,000 and, in the case of a progressive extension of activities, the deficit would be \$57,000,000 instead of the \$105,162,400 appearing in Annex 22 (1).
33. It was agreed that Working Party IV should however take account of the specific problems facing a European office, which will have greater difficulty in recruiting its staff than a national office, and which must in any case

(1) The Netherlands delegation has drawn up a note on this subject. This note, which will be made available to Working Party IV, is being distributed under reference BR/GT I/42/70.

arrange for their training, which could entail substantial initial expenditure. Finally, a number of delegations considered that the figures given in Annex 2 for "year 0" should be carefully examined.

I. Partial financing of the European Patent Office by a share in the renewal fees imposed by the national offices

34. The Working Party had a thorough discussion of the basis on which a share in the renewal fees levied by the national offices on account of European patents should be allocated to the EPO, in order to assist in financing it (Annexes 24 and 25).

35. (a) The system adopted in the paper submitted to Working Party I was that the national offices would pay 75 % of the yield of renewal fees on account of European patents to the EPO.

The delegations which gave their agreement in principle to this system accepted that 75 % was an appropriate figure, since the two following lines of thought have to be taken into consideration. On one hand, the national offices will only have to do an extremely small amount of work in connection with European patents granted by the EPO, which justifies the payment of a large portion of the renewal fees to the EPO but, on the other hand, it is necessary to remember that these renewal fees generally constitute the principal means of financing the national offices.

36. It was pointed out that this system might not be very fair, in view of the great differences among the renewal fees existing in the various Contracting States for granted patents. It was also stated that such a system could introduce an element of uncertainty into a considerable proportion of the EPO's revenue, since the Contracting States would retain the possibility of changing the level of their fees. A Contracting State could also repeal its national patent law, with the result that renewal fees would no longer be levied in that State.

It was pointed out in this connection that no Contracting State could make an appreciable reduction in its renewal fees for patents without running the risk of being faced with a very large number of monopoly rights, which could have most undesirable consequences at the economic level.

Finally, one delegation noted that in certain countries the level of the renewal fees included a factor representing the cost of the search made either by the IIB or by a national office. Since a fee is already charged in this connection for the European patent, certain Contracting States would be led to modify the scale of their renewal fees for the European patent, or even to lay down two different scales of renewal fees for national patents and for European patents.

37. (b) It was therefore suggested that a different system should be envisaged, under which a given renewal fee would be fixed for the European patent, possibly in accordance with the size of the respective Contracting States.

It was pointed out, as regards such a system, that the differences among renewal fees in the various Contracting States would not seem that unfair. Further, if it is remembered that the level of renewal fees is indeed very low in some States, a system providing for higher fees for granted European patents could cause such a State either to increase the level of its fees significantly or to refrain from acceding to the Convention.

38. The remark concerning the EPO's need to have a guaranteed income from renewal fees led the Working Party to envisage that, were the first system (referred to under (a) above) to be adopted, provision would at least have to be made, should the figure of 75 % of national renewal fees not produce a specified amount, for the balance to be covered either directly by the national office of the State concerned or by a supplementary contribution by that State.
39. The Working Party considered that, especially in order to simplify administrative procedure, it would not be practical to provide for applicants to pay part of the renewal fees directly to the EPO. Further, it was pointed out that since patents granted by the EPO are administered by national offices after grant, it was for the latter to levy national fees, in accordance with the legal position of patents in the respective States.

40. Taking into account the various points raised during its discussions, the Working Party finally decided that Working Party IV should in particular examine the following two systems:

- (i) that provided for in Annex 25 of the Chairman's paper, which involves payment by the national offices of 75 % of the annual fees charged by them on account of European patents. A minimum amount should be laid down for each Contracting State. Payment of this amount should be guaranteed by each Contracting State;
- (ii) a study could be made of a second system, not based on the national fees in force, but on a scale of fees for granted European patents laid down for each Contracting State, in accordance with criteria to be decided upon.

J. Choice of a scale of contributions for the advances to be made by Contracting States and their reimbursement (Annexes 26 to 28)

41. The Working Party studied the problem of the choice of a scale for the contributions to be made by the Contracting States throughout the period during which the total revenue from fees accruing to the EPO (procedural fees, renewal fees for applications, a share in national fees in respect of granted patents) will not be sufficient to cover its expenditure.

42. The Working Party first of all noted that to view the problem in the right perspective, it should be realized that contributions by Contracting States would be repayable advances, and not grants.

The Working Party then agreed that it would be advisable to preclude any scale for contributions by States based upon any factor other than the relative importance of each State in the patents field. It therefore rejected the choice of a scale based either on gross national product or on the population of the Contracting States.

43. Having accepted the principle that the scale must be based exclusively upon the importance of each Contracting State in the patents field, the Working Party considered a number of possible scales.

One possibility would have been to take as a basis the frequency of designation of Contracting States. Such a scale did not commend itself to the Working Party, in view of the considerable degree of uncertainty and variability involved. It would, moreover, be inequitable, since the Contracting States to the second Convention must all be designated together.

The Working Party also agreed that a scale based upon the number of patents granted in the various States would be unomitable in that it would create distortions between States in which patents are granted after examination and those in which patents are registered.

44. The Working Party thought it best to adopt a fixed scale, having agreed that the scale adopted should remain in force throughout the whole of the period during which national contributions would be needed as well as during that in which such contributions would be reimbursed to the various Contracting States by the EPO, once its budget was in surplus. Furthermore, a fixed scale, laid down in the Convention, would enable any State that might subsequently wish to accede thereto to assess its total commitments, and would prevent discussion of the scale of contributions being re-opened.
45. One delegation suggested studying a scale based on the number of applications from the Contracting States which are converted into European patent applications, taking the "three States theory" into account.
46. The Working Party considered that Working Party IV should refer above all to column 6 of Annex 28 when adopting the scale. It was agreed that the statistics to be used for fixing the percentages laid down under this scale should be those obtaining for the second year preceding the opening of the European Patent Office.
47. Finally, it will be necessary to study the rate at which the EPO should repay States' contributions. It was pointed out in this connection that, in the event of

other States acceding to the Convention at a later date, the EPO should first reimburse the initial contributions already paid to it by the original Contracting States.

III

Examination of the Working Party's subsequent programme of work and fixing of the dates for further meetings

48. The Working Party noted its agreement to the Annex to the agenda submitted to it, it being understood that account would also have to be taken, as regards section IV, point 1, of the final version of the PCT Treaty as decided upon at the Washington Diplomatic Conference.
49. The Working Party agreed to the following timetable for its next meetings:

- (i) 8 to 11 September 1970
- (ii) 1 to 4 December 1970
- (iii) 12 to 15 January 1971.

IV

Setting up of a sub-committee to draft the Implementing Regulations

50. The Working Party decided to set up a sub-committee to draft the Implementing Regulations to the Convention.

It was agreed that the sub-committee should finish its work by 30 November 1970.

It was agreed that each of the delegations taking part in Working Party I would have the right to delegate experts to the sub-committee.

V

Other business

Initial Draft establishment plan for the European Patent Office

51. The Working Party held an introductory exchange of views on the initial draft establishment plan submitted to it by the Chairman. The Working Party came to no final conclusion with regard to this plan.

The Working Party will, in particular, need to examine at a later date, when discussions on this subject have been initiated between the Contracting States to the second Convention, whether the Patent Administration Division, or part of it, might possibly be attached to Directorate General III.

It will also have to study whether part of Division 3 of Directorate General III (classification) should be brought under Directorate General I, which is responsible for the grant of patents.

52. Finally, the Working Party agreed that it was not necessary, at the present stage, to reach a decision on the initial draft establishment plan, since this could be examined after the Convention had been signed.

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ANNEXE I

au doc. BR/GT I/41/70

ANLAGE I

zu Dok. BR/GT I/41/70

ARBEITSGRUPPE I

ANNEX I

to doc. BR/GT I/41/70

(Luxembourg, 1. bis 3. April 1970)

VERZEICHNIS DER TEILNEHMER

WORKING PARTY I

(Luxembourg, 1 to 3 April 1970)

LIST OF PARTICIPANTS

GROUPE DE TRAVAIL I

(Luxembourg, 1 au 3 avril 1970)

LISTE DES PARTICIPANTS

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Dr. K. HAERTEL

Präsident des Deutschen Patentamtes

- DELEGATIONEN - DELEGATIONS - DELEGATIONS

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BR/GT I/41 d/e/f/70

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

Brussels, 17 March 1970

BR/GT/I/36/70

- Secretariat -

ANNEX II

to doc. BR/GT I/41/70

PROVISIONAL AGENDA

for the meeting of Working Party I,

(1 - 3 April 1970)⁽¹⁾

1. Opening of the meeting and adoption of the provisional agenda
2. Drawing up of recommendations for Working Party IV

Working document:

Paper by the Chairman (BR/GT I/34/70), dated 3 February,
24 February and 6 March 1970, with Annexes numbered 1 to 29

3. Discussion on further work programme for Working Party I
(see Annex) and fixing of dates for further meetings
4. Setting up of a Working Party sub-committee to draw up the
Implementing Regulations
5. Other business

(1) The present agenda has been proposed by the Chairman of
Working Party I.

Documentation:

Working document BR/GT I/10/69, dated 12 August 1969,
put forward by the Chairman;

Proposal from the Swedish delegation concerning amendments
to Articles 61 and 162 - BR/GT I/25/69, dated 20 November 1969.

(b) Articles 185 et seq. of the 1962 Draft:

Transitional and Final Provisions, in so far as these
concern Patent Law provisions, viz.:

Article 186 Progressive expansion of the field of
activity of the European Patent Office

Article 188 National filing

Article 206 Application to national utility models

Article 207 Adaption of national law to the European
Patent Law

II. Drawing up of the Implementing Regulations

- Working Party sub-committee -

III. Drawing up of the Rules relating to fees

IV. Review of the Draft Convention (2nd reading),

1. taking into account the decisions of the Inter-govern-
mental Conference in regard to the positions stated by
the interested circles, and
2. with a view to deciding on the questions remaining open.

V. Drawing up of a provisional organisation plan for the
European Patent Office

Survey
of the work remaining to be accomplished by
Working Party I (as at 1 April 1970)

I. Completion of the Draft Convention

1. Articles 24 to 27 (26 - 28a) and 29((30):
Mortgaging of a European patent application, etc., and
Supplementary application of national law
2. Article 33: Discussion of the Memorandum by the British
Delegation on Branch Examining Offices of the European
Patent Office (BR/GT I/13/69, dated 30 September 1969)
3. Articles 124 to 128 (114 - 118)
Conversion of a European patent application into a
national application
4. Articles 153 et seq. of the 1965 Draft, in so far as
they concern Patent Law provisions, viz.:
(a) Articles 153 - 173: Common provisions for procedure
before the European Patent Office

and Article 180 : Opinion by the European Patent
Office

Footnote (1) contd.

At its 3rd meeting, on 24 to 28 November 1969, the Working Party had envisaged setting up a sub-committee to draw up the Implementing Regulations. The setting up of such a sub-committee has been proposed as item 4 on the agenda. Each delegation should have the option of seconding one or more of its members to this sub-committee. The sub-committee should be formed at the meeting of 1 to 3 April, and elect its Chairman and fix the dates of its future meetings on the same occasion.

It has been left to the delegations to complete or suggest amendments to the survey annexed to the agenda. The co-ordinating duties entrusted to Working Party I by decision of the Inter-governmental Conference (Minutes of the 2nd meeting, BR/26/70, point 46) have not been taken into consideration in this survey.
