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Comment:

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- Secretariat -

WORKING PARTY I

Regulations Sub-Group

Note by the United Kingdom Delegation

At the last meeting of the Sub-group, the United Kingdom delegation agreed to look into the question whether Re. Article 69, No. 1, as adopted by the Sub-group, required to be extended to cover situations other than those in which an application is "deemed to be withdrawn".

The idea underlying Re. Article 69, No. 1 is to avoid as much as possible the need for the European Patent Office to issue a decision, the feeling being that in the majority of cases the applicant will be content with a notification made quickly and inexpensively by a clerical officer. As we understand it, the simplified procedure of this Regulation is presently limited to cases in which an application is "deemed to be withdrawn" for the reason that, in such cases, only questions of fact need to be answered. It is simply necessary to determine whether the applicant has paid the fees or replied to an official objection in good time.

It seems to us that there are other situations which would seem on the present draft to require a decision to be issued, but which mainly involve a determination of simple facts, and we suggest that the Sub-group might consider the inclusion in Re. Article 69, No. 1 of the following cases:-

- (i) where a notice of opposition is "deemed not to have been given" (Article 101, paragraph 1) because the fee has not been paid. (Inclusion of this case would seem to involve amendment of Re. Article 101,

- No. 3 which specifies rejection of the notice as inadmissible, this presumably requiring a decision);
- (ii) where a notice of appeal is deemed not to have been lodged because the fee has not been paid (see Article 111). In passing we would point out that in the case of appeals no Regulation corresponding to Re. Article 101, No. 3 has been included;
 - (iii) where an opponent or appellant fails to sign the notice of opposition or appeal or to submit a document reproducing the contents of a telex or telegram within the permitted period (see Re. Article 66, Nos. 10 and 11);
 - (iv) where an appellant is deemed to have waived his right to participate (Re. Article 113, No. 2).

In all these cases, the proceedings terminate as regards a party in just the same way as proceedings terminate for an applicant when his application is "deemed to be withdrawn". However, there seems no good reason to limit Re. Article 69, No. 1 to situations which terminate proceedings for one or other of the parties. When the Office deems the designation of a State to be withdrawn (Article 78(6) as adopted by Working Party I in December) or deems an application for a Patent of Addition to be an application for an independent patent (Article 88(4)), the applicant is adversely affected and we presume that a decision is issued as a matter of course, though, under the terms of Article 108, paragraph 2, appeal on either of these points alone is not possible. If we are right in thinking that a decision is to be issued in these cases, then we suggest that the procedure of Re. Article 69, No. 1 could just as well be used for these cases also.

In order to cover all the situations mentioned above, Re. Article 69, No. 1 might be re-drafted as follows:-

(1) If the European Patent Office notes that

- (i) a European application is deemed to be withdrawn,
- (ii) the designation of a Contracting State is deemed to be withdrawn,
- (iii) a European application for a Patent of Addition is deemed to be an application for an independent patent,
- (iv) a notice of opposition or appeal is deemed not to have been given, or
- (v) an appellant is deemed to have waived his right to participate in appeal proceedings,

it shall so notify the person concerned in accordance with the provisions of Article 161.

(2) If the finding by the European Patent Office is disputed, the person concerned may within a period of 2 months from the notification referred to in paragraph (1), apply for a decision by the European Patent Office. Such decision shall be given only if the European Patent Office does not share the opinion of the person requesting it.
