

BR/GT IV/32 e/70

Travaux Préparatoires CBE 1973

- Sekretariat -

M I N U T E S

of the second meeting of Working Party IV
(Luxembourg, 6 - 9 July 1970)

1. The second meeting of Working Party IV was held in Luxembourg, from 6 to 9 July 1970 with Mr. E. ARMITAGE, Comptroller General of the Patent Office, London, in the chair.

As at the first meeting, the representatives of the International Patent Institute at The Hague took part in the meeting as observers. The representatives of the Council of Europe and of WIPO/BIRPI apologised for their absence (1).

I. - ORGANISATION OF THE WORK

2. On the proposal of the Chairman, Working Party IV decided to organise its work as follows:

(1) The list of participants is annexed to this document.

(a) Financial provisions of the Preliminary Draft of a Convention establishing a European System for the Grant of Patents

The Working Party agreed to undertake a first reading of Articles 42 to 53 and 186 to 187a of this Draft; the proposed text had been submitted to it by the Chairman (BR/GT IV/24/70) or was worked out during the meeting (1).

(b) The Working Party's report on the financing of the European Patent Office

It was decided to discuss, at this second meeting, the report (BR/GT IV/19/70) prepared by the Chairman of Working Party IV and to re-examine the annexes to this report, since they required amending in order to take account of the comments made by Working Party IV.

3. As during the first meeting, the Drafting Committee under the Chairmanship of Mr. SINGER was instructed to record the conclusions of the debates and, more particularly, to revise the financial provisions of the Preliminary Draft of the Convention establishing a European System for the Grant of Patents and to draft the text of new proposals, taking into account the comments made by the members of Working Party IV at this meeting.

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- (1) A new text for these Articles, taking into account the comments made by Working Party IV during its meeting from 6 to 9 July 1970, is given in documents BR/GT IV/31/70.

II. - EXAMINATION OF THE FINANCIAL PROVISIONS OF
THE PRELIMINARY DRAFT OF A CONVENTION
ESTABLISHING A EUROPEAN SYSTEM FOR THE GRANT
OF PATENTS

(BR/GT IV/24/70, with additional proposals
worked out during the meeting)

Article 42

4. When examining the manner in which the expenditure of the European Patent Office should be met, the members of Working Party IV decided to mention in Article 42 all the sources of finance which can be called to cover the expenditure, viz.:
- (a) the European Patent Office's own resources;
 - (b) payment by the Contracting States in respect of renewal fees for European patents;
 - (c) special repayable contributions made by the Contracting States.
5. The question of a reserve fund and a working balance was raised in connection with Article 42. The delegations confirmed the usefulness of such funds, whose purpose is to allow the EPO, particularly as it comes into operation, to meet unforeseen expenditure and always to have sufficient liquid resources to carry out its task. The delegations thought, however, that, rather than refer explicitly to the establishment of such funds in the financial provisions of the Convention, it would be preferable to recast the text of the Articles relating to the financing of the EPO in such a way that these objectives can be simultaneously pursued at several levels, in particular in Articles:

- 42b (payments by the Contracting States in respect of renewal fees for European patents)
- 42d (special financial contributions)
- 42e (advances)
- 42f (appropriation for unforeseeable expenditure)
- 42g (transitional period)

which will take account of these preoccupations.

6. The members of the Working Party also decided that the principle embodied in Article 42, according to which the fees and the payments of the Contracting States in respect of renewal fees for European patents must be fixed so as to cover all the EPO's expenditure is to be the subject of a new Article, viz. Article 42c, in order to affirm this principle more explicitly.

Article 42a

7. Article 42a will deal with the European Patent Office's own resources. This Article will also mention the miscellaneous receipts of the EPO.

Article 42b

8. Article 42b will regulate the payments by the Contracting States in respect of renewal fees for European patents. The various delegations agreed on the principle that when payments by the Contracting States in respect of renewal fees for European patents are not made by the due dates, they shall be subject to the payment of interest

in respect of arrears. According to proposals by the German delegation, it was also provided, in the draft of Article 42b, that the rate of interest should be fixed at such a level that the interest covers the cost of a corresponding line of credit. While confirming their agreements on the principle of fixing a rate of interest, the delegations decided, for psychological reasons, not to refer to the rate of interest in the Articles of the Convention, but to leave the rate to be fixed in the Financial Regulations.

Article 42c

9. In Article 42c the principle will be laid down that ordinary revenue fees, and payments by the Contracting States in respect of the renewal of European patents are to be fixed so as to balance the expenditure.

Article 42d

10. This Article regulates the call that the European Patent Office may make on special financial contributions. The second paragraph, which stipulates that the special contributions will be determined in accordance with a scale based on the number of patent applications filed in the respective Contracting States during the last year but one prior to the establishment of the European Patent Office, is subject to reservations. The reservations apply till the Spanish and Luxembourg proposals are examined during the October meeting, since these two delegations have asked for the adoption of a different scale (see points 56 and 60 below).

Article 42e

11. Article 42e regulates the conditions under which the European Patent Office can ask for advances. Working Party IV examined the principle of the matter and agreed to continue the examination during its meeting in October.

Article 42f

12. Still with the object of allowing the European Patent Office to meet all the situations which might arise and, more particularly, to put it in a position to deal with any unforeseeable expenditure during the running-in period, Article 42f makes it possible to introduce an item for unforeseeable expenditure into the EPO's budget, the employment of the appropriations assigned to this item being subject to a prior decision by the Administrative Council.

Article 42g

13. Article 42g applies to the transitional period and provides for a recourse to special repayable contributions during the running-in period. This Article also refers to procedures for repaying these contributions. The members of Working Party IV agreed that these provisions, which are provisionally placed in an Article 42g, should appear in the transitional provisions.

The delegations agreed to study this Article in more detail during their meeting in October.

Article 43

14. Article 43 on the budget was adopted as it stood (BR/GT IV/24/70).

Article 44

15. The text of this Article, concerning the utilisation of expenditure, was also adopted as it stood, except that the term "Financial Regulations" will be used in place of "Regulations" (1).

The Norwegian delegation asked that the possibility of carrying forward appropriations should not be limited to a single financial year. The German and French delegations pointed out that the wishes of the Norwegian delegation could be met in another context: the German delegation thought that the problem might be solved by budget planning extending over several years while the French delegation was prepared to provide for this possibility in the Financial Regulations.

Article 45

16. Article 45 on the definition of the financial year was adopted as it stood.

(1) In the French text of Article 44, paragraph 2, second line, read "qui ne seront pas utilisées" instead of "qui seront utilisées".

Article 46

17. The original text of Article 46 concerning the presentation of the draft budget was also retained. The reservation about the reference to the Administrative Council was withdrawn.

Article 47

18. The provisions of Article 47 on the adoption of the budget were likewise adopted. The reservation regarding the Administrative Council was withdrawn.

Article 48

19. The provisions of Article 48 on the adoption of a provisional budget were retained as they stood. The above-mentioned reservation, and also that concerning the draft budget, were withdrawn. The last paragraph (paragraph 3), whose deletion had been suggested, is held over for the time being; the delegations agreed to re-examine the provisions of this paragraph during their next meeting.

Article 49

20. Working Party IV agreed on the text of Article 49 on budget implementation. Except for the reference to Financial Regulations (instead of Regulations), the Article was not amended in any way.

Article 50

21. The text of Article 50 on the auditing of accounts was adopted as it stood (1). The reservations in the text with regard to the reference to the Administrative Council have been withdrawn. The earlier note on Article 50 at the bottom of the page, which considers the possibility of introducing some prior approval, has been deleted.

Article 51

22. The second paragraph of the original text of Article 51 on the unit of account to be used by the European Patent Office has been replaced by the following text:

"(2) The financial contributions provided for in Article 42, paragraph 1, shall be made available to the European Patent Office by the Contracting States in accordance with the provisions of the Financial Regulations adopted pursuant to Article 53."

23. Paragraphs 3 and 4 were deleted. The members of the Working Party agreed to leave it to the Administrative Council to establish, in the Financial Regulations, the procedures according to which the financial contributions provided for in Article 42 are to be paid to the European Patent Office. The German delegation nevertheless requested that the minutes of the meeting should state that, in its view, the financial contributions provided for in Article 42 should be paid in a convertible currency.

(1) In the French text of Article 50, paragraph 1, last sentence, read "rémunération" instead of "numération".

24. It is the opinion of the Working Party that the obligation on the Contracting States to maintain the value of funds which they have deposited at the rate of exchange in force on the day of their deposit should be retained and affirmed in the Financial Regulations. The delegations nevertheless agreed that this is a difficult problem and that the procedures should be studied more thoroughly.

Article 52

25. Article 52 in the original text, regulating the transfer of currency holdings, was deleted.

Article 53

26. Article 53 on the Financial Regulations was recast so as not to refer to the Administrative Council. The provision under (d), according to which the Financial Regulations establish the scale for the financial contributions of the Contracting States, has been provisionally held over.

Article 186

27. Article 186, which deals with the progressive expansion of the field of activity of the European Patent Office (stufenweiser Ausbau) has still to be discussed by Working Party I at its September meeting. The German delegation announced that the Chairman of Working Party I will propose a new draft of this Article. Under these circumstances, Working Party IV thought it best to draw the attention of Working Party I to the need to harmonise the new text of Article 186 with the new text of Article 187, more particularly as regards the concepts of establishment ("mise en fonctionnement") and opening ("ouverture") of the European Patent Office.

Article 187

28. Article 187 deals with the first accounting period of the European Patent Office. In the first paragraph, the French text of the first sentence and the English and French texts of the second sentence were slightly amended. The second paragraph of Article 187, which regulates the call on interest free advances, has been recast so that the reasons for it no longer appear in the provisions of this paragraph.
29. Paragraph 3, regulating initial recruitment, was adopted as it stood, subject to the agreement of Working Parties I and III, which are also competent in this matter. The Secretariat will send a note to this effect to Working Parties I and III.

The note at the bottom of the page was deleted.

Article 187a

30. The Question whether, after the adoption of Articles 42d and 42g, it will still be necessary to maintain the provisions of Article 187a, has not yet been definitely settled.
31. The examination of the financial provisions of the Preliminary Draft of a Convention establishing a European System for the Grant of Patents was closed by a remark by the Chairman of the Working Party that the provisions will have to be read a second time when Working Party IV meets in October.

32. Finally, the Working Party's attention was drawn to the fact that, in the context of the financial provisions provisionally adopted, there are quite a number of Articles which give the Administrative Council powers to regulate certain matters. This leaves the question open as to whether the powers of the Administrative Council need defining elsewhere than in the Convention. The Working Party also raised the question whether Committees with a special competence should be created within the Administrative Council, for instance a Committee for financial questions.

The Working Party considers that the attention of Working Party I, in its capacity as the Co-ordinating Working Party should be drawn to these problems.

III. EXAMINATION OF THE REPORT BY THE CHAIRMAN
OF WORKING PARTY IV ON THE FINANCING OF
THE EUROPEAN PATENT OFFICE

(BR/GT IV/19/70)

Section I: General

33. Starting its examination by considering the general observations in its Chairman's report, Working Party IV decided to re-examine the statements made on page 2 as they might give the impression that the deficit would be limited to the early years.

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- Secretariat -

AMENDMENT TO THE MINUTES
of the second meeting of Working Party IV
(Luxembourg, 6-9 July 1970)
put forward by the United Kingdom Delegation

At the request of the United Kingdom Delegation, the following text should replace the text of point 24 (page 10) of BR/GT IV/32/70;

" 24. The United Kingdom Delegation stated that an obligation such as that provided for in Article 51(3), to maintain the value of deposited funds at the rate of exchange in force on the day of their deposit, could not be accepted by the United Kingdom. Other delegations also had some doubts regarding this provision. The matter was left for further discussion in the context of the Financial Regulation."



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FOR THE SETTING UP OF A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

- Secretariat -

zu Dok. ANLAGE
BR/GT IV/32/70

to Doc. ANNEX
BR/GT IV/32/70

au doc. ANNEXE
BR/GT IV/32/70

ARBEITSGRUPPE IV

(Luxemburg, 6. bis 9. Juli 1970)

VERZEICHNIS DER TEILNEHMER

WORKING PARTY IV

(Luxembourg, 6 to 9 July 1970)

LIST OF PARTICIPANTS

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(Luxembourg, 6 au 9 juillet 1970)

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