

CA/PL 11/98

Orig.: German

Munich, 15.04.1998

SUBJECT: Revision of the EPC: Article 23(1) EPC
DRAWN UP BY: President of the European Patent Office
ADDRESSEES: Committee on Patent Law (for opinion)

SUMMARY

The present document contains a proposal for amending Article 23(1) EPC. The amendment is intended to make clear that members of the boards of appeal cannot continue in office beyond the age limit stipulated in the Service Regulations for permanent employees of the European Patent Office (ServRegs).

I. INTRODUCTION

1. Under Article 23(1) EPC, members of the Enlarged Board of Appeal and the boards of appeal are appointed for a term of five years and may not be removed from office during that term. By contrast, Article 54(1) ServRegs states that a permanent EPO employee is retired on the last day of the month during which he reaches the age of 65. The provisions of the Service Regulations apply to members of the boards of appeal as employees of the European Patent Office in so far as they are not prejudicial to the members' independence (see Article 1(4) ServRegs). The question therefore arises as to whether the provisions of the Service Regulations on retirement also apply to the members of the boards of appeal, or whether Article 23(1) EPC alone applies throughout their term of office.
2. The European Patent Office and the Administrative Council consider that the age limit of 65 for retirement applies, without exception, to members of the boards of appeal too, even where the five-year period of appointment has not expired by the time the age limit is reached [see Administrative Council declaration at its 62nd meeting (CA/PV 62 points 42-45) which was endorsed at its 65th meeting (CA/PV 65 point 17)]. This is also clearly stated in Article 41(4) ServRegs which stipulates that on no account may the performance of the duties of a member of a board avoid the application of the provisions of Article 54 ServRegs.
3. In the past, members of the boards of appeal have occasionally objected to retiring at the age of 65 on the grounds that their period of appointment ran for five years. One reason for this was that they had not yet been employed by the Office for ten years and were not therefore entitled to a pension (see CA/141/96 and CA/PV 65 point 172). The Administrative Council has therefore in individual cases approved an extension of employment beyond the age limit. On the other hand, the Administrative Council decided in the case of someone due to be reappointed one and a half years before reaching the age of 65 to appoint him not for a five-year term but only up to retirement age (see CA/23/95, CA/PV 57 points 4 and 5).
4. By means of the proposed amendment, the rule set out in Article 41(4) ServRegs will be incorporated into the Convention. This will remove the present lack of clarity in the relationship between Article 23 EPC and Article 54 ServRegs. The new wording makes clear when the term of office of board members is terminated prior to the expiry of their period of appointment. This will be either when the member resigns (Articles 50(a) and 51 ServRegs) or retires (Articles 50(c) and 54 ServRegs). Assignment to reserve status under Article 46 ServRegs has deliberately not been included. This will ensure that the independence of members of boards of appeal is not affected by the new provisions.

II. PROPOSAL

Present wording

Article 23

Independence of the members of the Boards

(1) The members of the Enlarged Board of Appeal and the Boards of Appeal shall be appointed for a term of five years and may not be removed from office during this term, except if there are serious grounds for such removal and if the Administrative Council, on a proposal from the Enlarged Board of Appeal, takes a decision to this effect.

Proposed wording

Article 23

Independence of the members of the Boards

(1) The members of the Enlarged Board of Appeal and the Boards of Appeal shall be appointed for a term of five years and may not be removed from office during this term, except if there are serious grounds for such removal and if the Administrative Council, on a proposal from the Enlarged Board of Appeal, takes a decision to this effect. **Notwithstanding sentence 1, the term of office of members of the Boards shall end if they resign or are retired in accordance with the Service Regulations for permanent employees of the European Patent Office.**

Explanations

Article 23(1) EPC stipulates that members of the Enlarged Board of Appeal and the boards of appeal are appointed for a term of five years and may not be removed from office during that term. In the past, the President and the Administrative Council have been requested to make exceptions in individual cases so that members of the boards of appeal can remain in office after reaching the age of 65 and up to the expiry of their period of

appointment. The Administrative Council has repeatedly stated that Article 54(1) of the Service Regulations for permanent employees of the European Patent Office (ServRegs), according to which retirement takes place at the age of 65 at the latest, also applies to members of the Enlarged Board of Appeal and the boards of appeal. The new provision is intended to define the cases (see Article 50(a) and (c) ServRegs) where the term of office of board members ends prior to the expiry of their period of appointment.

(2) The members of the Boards may not be members of the Receiving Section, Examining Divisions, Opposition Divisions or of the Legal Division.

unchanged

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

unchanged

(4) The Rules of Procedure of the Boards of Appeal and the Enlarged Board of Appeal shall be adopted in accordance with the provisions of the Implementing Regulations. They shall be subject to the approval of the Administrative Council.

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