M I N U T E S

of the

7th meeting of the

COMMITTEE ON PATENT LAW

(Munich, 12-13 May 1998)

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C O N T E N T S

A. OPENING ITEMS

1. The 7th meeting of the Committee on Patent Law, chaired by Mr Mühlens (DE), took place from 12-13 May 1998 in Munich. The list of participants is annexed hereto.

2. The chairman welcomed those attending, extending a special welcome to the delegate from Cyprus, which became the European Patent Organisation's 19th Contracting State with effect from 1 April 1998.

3. The Committee adopted the provisional agenda as set out in CA/PL 7/98, agreeing to add under "Other business" a report on the status of the Biotechnology Directive, an exchange of information regarding the recognition of priority rights with non-WTO countries and possible software problems in respect of the so-called "millenium bug".

4. The Committee approved the draft minutes of the 6th meeting (CA/PL 6/98), with the amendments proposed by the Belgian, Netherlands and Swedish delegations (see CA/PL PV 6).

B. LEGAL AND INTERNATIONAL AFFAIRS

I. LANGUAGE ISSUE

Ia. ALTERNATIVES TO THE PACKAGE SOLUTION (CA/PL 8/98)

5. The EPO presented the Draft Report of the Committee to the Administrative Council on this issue. Attention was drawn to the Opinion of the Economic and Social Committee of the European Union regarding the *Green Paper* (CA/63/98), which recommended the Package Solution.

   As alternatives thereto, three solutions were outlined in CA/PL 8/98: no full translation of the patent specification, translation in the EPO languages, and translation arrangements along the lines of the CPC 1975. For each possible solution, details concerning the implementation and an assessment of the advantages and cost-effectiveness were given.

6. The Chairman reminded the Committee that it was entrusted with the task of presenting alternatives to the package solution, describing them, and studying their feasibility from a legal standpoint. Therefore, the Committee's task was to finalise the Report to the Administrative Council on the results of its work on the language issue.

7. The Portuguese and Spanish delegations pointed out that since the EPO was not a Community institution, the Opinion of the EU Economic and Social Committee should not be considered overly relevant. Any modification of the EPO's present language regime should be made on a voluntary basis, and should be feasible without amending Article 65 EPC.

No translation of the patent specification

8. The Hellenic delegation emphasised that one of the great advantages of this solution was that it was voluntary in nature, and found it therefore very attractive. However, the suggestion that this solution could be carried out by Contracting States concluding multilateral agreements amongst themselves (CA/PL 8/98, point 4) was objected to.

In addition, it was queried how the EPO had come to the figure of 2500 DM for the translation of the patent specification quoted in Annex I, and whether this sum was real or estimated. In Ellas, the price of a translation made by a professional representative amounted to a total of about 1200 DM.

9. With respect to the matter of multilateral agreements, the Chairman observed that Article 65 EPC allowed the Contracting States to decide whether to require a translation. Contracting States could either simply change their national law, or decide to conclude agreements in which they undertook to remove their translation requirements. The effect was the same, independently of whether the basis for removing the translation requirement was unilateral or the consequence of an agreement.

10. The EPO explained that the expression used in the French version of the document "dans le cadre d'accords multilateraux" did not do justice to the term in the original version of the document. What was meant here, was that some Contracting States could elect to rescind their translation requirements if a given State or a certain number of States were willing to do the same.

Addressing the second point of the Hellenic intervention, the EPO informed that the cost figures were based on the EPO's cost study conducted 4 years ago.

11. The Netherlands delegation felt that if "reciprocal agreements" meant that Contracting States could agree amongst themselves to abandon the option offered under Article 65 EPC on a reciprocal basis, this was discriminatory and in contradiction with the EC Treaty.

12. The EPO observed that there would be no discrimination as a renunciation of the translation requirement would apply to all applicants, and thus be fully in line with the EC Treaty and the WTO/TRIPs Agreement.

13. The Swiss delegation proposed that the word "reciprocal" simply be stricken from document CA/PL 8/98.

14. The Spanish delegation announced that as a matter of principle, for constitutional reasons, it could not agree to either the solution of "no full translation" nor that of "translation in the three EPO languages". As far as the sentence under discussion was concerned, all references to agreements should be stricken.

15. The Portuguese delegation stated that it was self-evident that every Contracting State could unilaterally decide to renounce the translation requirement. The "no full translation" solution would not imply a modification of Article 65 EPC, only the suppression of the national provisions.

16. The German delegation had no objection if the document were amended to state only that individual states could remove the requirement of full translation on a voluntary basis. Whether it rested on a factual reciprocity with other states or on a more formal basis was irrelevant. Of course, an agreement was more binding than a unilateral declaration.

17. The Swiss delegation worried that false conclusions might be drawn from the striking of the clause and requested that the record expressly state that no Contracting State could be hindered from concluding agreements with other Contracting States for matters which were not definitely settled under the EPC.

18. In reaction to the Portuguese intervention, the EPO proposed that the relevant text should be reduced to the single sentence: "Legally, such a solution would not necessitate a revision of the EPC and could be implemented by suppressing the national provisions requiring translations passed pursuant to Article 65 EPC".

19. In order to calculate the costs of translations and present an up-to-date picture of the savings which could be realised, the Hellenic delegation proposed that new data for each Contracting State were collected and presented in a detailed table. The EPO understood the Hellenic wish, but pointed out the difficulties which existed in gathering reliable data in this field.

20. The Austrian delegation considered it important that the Administrative Council be informed of the data on which the cost analysis was based, and suggested that Annex I should indicate that the cost calculations were based on figures from the EPO's 1994 cost study.

21. The Committee unanimously approved Part II of CA/PL 8/98, along with the amendments proposed by Portugal and the Austrian delegation (points 15, 20).

Translation into the EPO official languages

22. The Irish delegation observed that it did not understand the point of requiring Contracting States having as an official language one of the EPO languages to designate a further EPO language in which patents would be accepted without translation, since in the end, under this solution, every European Patent would be available in the three official EPO languages.

23. The EPO agreed that an alternative manner of viewing this solution was to simply require European patents to be translated in all three official languages of the EPO.

24. The Netherlands delegation expressed difficulties in that it was assumed that the Netherlands would choose German as a "second language" under the proposal, when in fact, under such a scheme, the chosen language would be English. Thus, it failed to see how under the proposed solution, one would come to a translation in the three official languages, because it was unclear which Contracting State would adopt German as a "second language".

25. The Hellenic delegation suggested to delete the proposal in that for some countries, including Ellas, accepting such a solution would entail constitutional difficulties.

26. The Austrian delegation proposed to strike the explanations given under point 9 of the document, but to keep the last sentence.

27. The Portuguese delegation warned that Contracting States might choose languages on the basis of the advantages which this language would bring, not necessarily exclusively on the basis of how well understood the language was within the Contracting State.

28. The Belgian delegation remarked that should this solution be adopted, the Contracting States could agree amongst themselves to select their respective second languages in such a manner that the three official EPO languages would be represented.

29. The EPO stated that this element was implicit in the solution. It was doubted whether it would be politically acceptable for a Contracting State to choose a language on another basis than that of how well the language was understood in the State.

30. The Swedish delegation requested that the last sentence of point 10, stating that centralised filing of translations at the EPO would be an appropriate additional component of the three language solution, should be struck out, as Sweden was against the idea of centralised filing.

31. The Austrian delegation opined that Article 65 EPC was to be interpreted to allow requiring a full translation of the specification, other variations were excluded.

32. The Committee endorsed Part III of the document with the proviso that the first two sentences of point 9 should be struck out and the last sentence reworded (see CA/70/98 point 9).

Translation arrangements as per CPC 1975

33. The Netherlands delegation pointed out that under the CPC 1975 approach two different solutions were presented and suggested that it would be more logical to present the basic elements of these solutions separately. Thus, the reservation solution could be combined with the other solutions put forth in the document.

34. The EPO explained that it had been asked to describe the two-pronged solution as per CPC 1975 in more detail. The elements of this solution could be combined with elements from other solutions, as implied in point 29. However, how these might be combined was an essentially political issue beyond the mandate entrusted to this Committee.

35. The Swiss and German delegations and the chairman found that the Report to the Administrative Council should not be unnecessarily delayed. When further input was received from the Administrative Council, possible combinations of elements of the various solutions could be discussed.

Conclusion

36. The Netherlands delegation pointed out that solutions not finding general agreement were not included in the Report and suggested that these should also be presented to the Administrative Council.

37. The Chairman stressed that the mandate of the Committee was to find feasible solutions to the language issue. Thus, solutions which were considered unacceptable could not be recommended. This filtering function was clearly part of the Committee's task.

38. The Netherlands delegation stated that the Committee's assessment of the compact solution might be based on a misunderstanding of the principle of that solution, namely that the solution entailed an obligation for the applicant to shorten his specification according to the instructions of the examiner. This was not the case.

39. The Chairman noted that shortening of the specification was always possible, but that the Committee had rejected the compact solution despite the arguments of the Netherlands and Austrian delegations. The Swiss delegation recalled that the Minutes of the last meeting reflected under point 93 the awareness of the Committee that the applicant could not be forced to shorten his description.

40. The German delegation pointed out that in drafting specifications, applicants and patent agents were fully aware of the looming translation costs and kept their specifications as short as possible whilst ensuring maximum legal security. The compact solution would not deliver the advantages hoped for.

41. The Chairman proposed that a sentence be included in the conclusions of the Report to the Administrative Council that the majority of the Committee was of the view that the three alternatives presented were legally and technically feasible, whereas the other alternatives to the package solution could not be recommended. Nevertheless, every applicant remained free to shorten his description.

42. The Austrian delegation felt that the Administrative Council should be informed that although the compact solution seemed to be no alternative to the package solution, more use should be made by applicants of the possibilities to shorten the description.

43. Regarding the solutions not to be recommended to the Administrative Council, the Chairman proposed that in point 2 of the Draft Report a footnote should be included referring to the discussion as reflected in the Minutes of the Committee's 6th meeting.

44. The Austrian delegation stated that it was already apparent at the 6th meeting of the Committee that there were differences of opinion as far as the interpretation of Article 65 EPC was concerned. In its view, Article 65 EPC merely provided an option

to require a translation along its terms. Other variations, such as providing for reasonable compensation or for rights of continued use in some cases, were not compatible with Article 65 EPC. This minority opinion should be reflected in the Report.

45. The Chairman proposed to reflect this in the Conclusion by adding that a majority in the Committee was of the view that the solutions presented did not require a revision of the EPC.

46. The Spanish delegation, supported by the Italian delegation, proposed that since it could not accept any of the three solutions presented in CA/PL 8/98 on constitutional grounds, the Conclusion should reflect that some delegations have strong reservations or are opposed to any change in the translation requirements.

47. The Belgian delegation queried why the centralised filing of translations, which had been found interesting by several delegations and had not been rejected in the 6th meeting, (CA/PL PV 6, point 108) had not been included in this document.

48. The Chairman pointed out that central filing of translations was considered in the greater context of reduction of costs, but did not constitute a measure going to the requirement of translations per se.

49. On intervention of the Hellenic, Swedish and Portuguese delegation, the Chairman proposed the following clarification to the third sentence of the first paragraph of the Conclusion: "The Committee notes that the solutions examined in detail by the Committee would allow substantial savings even if they were not at first implemented by all the Contracting States".

50. The Committee endorsed the Conclusion along with the modifications proposed under points 47 and 49, and agreed that the document as amended would be presented to the Administrative Council.

Ib. TRANSLATION REQUIREMENTS FOR EUROPEAN PATENTS AND EC TREATY - REFERRAL TO THE ECJ BY THE GERMAN FEDERAL PATENT COURT (CA/PL 9/98)

51. The Chairman introduced the referral to the ECJ pursuant to Article 177 of the EC Treaty, regarding the issue of whether current translation requirements are compatible with the principle of free movement of goods as set forth in Articles 30 and 36 of the EC Treaty.

52. The Portuguese delegation announced that it had prepared an intervention which concluded that the translation requirements did not constitute a "measure having equivalent effect" within the meaning of Articles 30 and 36 of the EC Treaty.

53. The delegations of Austria, Belgium, Denmark, Finland, France, Germany, Ellas, Ireland, Italy, Spain, Sweden and the United Kingdom announced that their governments would also intervene in the case.

II. REVISION OF THE EPC

IIa. POINTS FOR REVISION OF THE EPC (CA/16/98)

54. The Chairman recalled that today's exercise was not to decide whether the points listed in the document were worth examining - the Administrative Council has asked the Committee to study these points - but to review them and to propose a timetable for their study.

55. The EPO introduced the document containing a preliminary, non-exhaustive list of points for revision of a legal or technical nature. Substantiated proposals in regard of the various points would be prepared by the EPO, and submitted to the Committee for detailed study. Where alternatives existed as to how to change the Convention, or where open points were raised without suggestion as to the changes which might be envisaged, it was important that the interested circles and users of the system be consulted.

56. The Chairman indicated that due to the work-intensive nature of the preparation of the Committee's meetings, the latter would take place at 5-month intervals.

57. The representative of the Staff Committee informed on two proposals of the Staff Committee for revision of the EPC. CA/61/98 dealt with the independence of employees of the EPO and CA/62/98 concerned the recognition of international conventions on human rights etc. through the European Patent Organisation. The Staff Committee would forward these documents to the Administrative Council.

58. In reaction of an intervention of the Hellenic delegation, the EPO observed that the Administrative Council had given the Committee a mandate to study Article 142(1) EPC, despite the institutional nature of the point. Regardless of the instrument through which the Community patent would be implemented, there would be a link

between the Community patent and the relevant provisions of the EPC. However, it would be wise to postpone discussions on this point until the proposal of the EU-Commission regarding the Community patent was issued.

59. The Portuguese delegation wondered whether Article 142 might not simply be deleted. It was queried whether it was necessary to have a basis in the EPC for a Community patent having a unitary character.

60. The EPO said that not all EPC Contracting States were EU members states. This explained the need to provide a legal basis in the EPC for a Community patent. However, this could also be achieved through the conclusion of an agreement between the EU and the European Patent Organisation.

61. The Swiss delegation queried whether the Part IX of the EPC should not be reconsidered in its entirety, because it was theoretically possible to envisage the conclusion of agreements which might fall neither within the purview of Article 142, nor under that of Article 149 EPC. The Convention should be more flexible in this respect.

62. With regard to Article 52(2) EPC, the EPO emphasised the importance of protecting software-related inventions. Deleting Article 52(2) would send an important psychological signal. The Commission was considering to launch a proposal for a Directive on the patenting of software inventions, because it was felt that there were too many differences in the practice of EU member states. The EPO was planning to revise its examination guidelines, in order to adapt EPO practice to the recent developments in this field. In revising Article 52(2), discussions would not be confined to computer programs, but would extend to all the Article's exceptions.

63. The *epi* indicated that it would prefer a positive statement, to the effect that inventions were patentable regardless of the field of technology to which they belonged, rather than the mere deletion of the exclusion in Article 52(2) EPC.

64. The EPO assured that it granted patents in all technical areas, insofar as no express exclusion existed. This principle, as framed in TRIPs Article 27, could be enshrined in the EPC, regardless of the possible deletion of express exceptions to patentability as they now stood.

65. The Portuguese delegation opined that the fathers of the EPC did not consider that computer programs constituted inventions, and this view should be taken into account.

66. The Belgian delegation advised that the deletion of Article 52(2) EPC might not entirely solve the problem of patenting computer software. Furthermore, it was queried whether it was wise to discuss this matter now within the EPO, when it was known that a Directive was being prepared in Brussels.

67. The EPO confirmed that it was preferable to wait for the developments in Brussels.

68. Regarding Article 53(a) EPC, the Portuguese delegation wondered whether it might not be more advisable to revise the TRIPs Agreement to enable member states to exclude the patentability of inventions, the publication of which would be against ordre public, rather than revise the EPC to align it on TRIPs.

69. With regard to Article 61(1) EPC, the *epi* expressed that, according to the first alternative presented in CA/16/98, the rightful owner would be dependent upon what the first applicant decided to do, which might be unfair to the rightful owner. Furthermore, difficulties were foreseen in the proposed change to Article 76(1) EPC of allowing the introduction of new subject-matter in divisional applications. In particular, this would be detrimental to legal certainty. Experiences with this system in the US showed that it was fraught with difficulties in practice.

70. The German delegation warned that adopting the proposed change to Article 76(1) EPC would fundamentally change the European practice. If a new system were conceived so as to allow such introduction of new subject-matter in a divisional application, this should only be possible as an exception in unfortunate cases.

71. Concerning the proposed changes to Article 88 EPC, the *epi* welcomed any simplification of the application procedure, but warned that documents would have to be easily accessible to third parties, for instance through electronic data transmission.

72. With regard to Article 84 EPC, the EPO noted that the Committee had already agreed that non-compliance with the requirement that the claims are supported by the description should not become a ground of opposition and revocation. The United Kingdom delegation nevertheless wished this point to remain on the agenda in order to consult with its interested circles.

73. The *epi*, supported by the Belgian delegation, opposed the elimination of the possibility of oral proceedings before the Receiving Section under Article 116 EPC, insofar as it would jeopardise the applicant's fundamental right to "due process"

which included the right to oral proceedings. The notion that all other instances of the EPO should be granted the discretion to refuse to hold oral proceedings was also vigorously rejected.

74. With respect to the proposal concerning the introduction of taking oral evidence under oath (Article 117 EPC), the Netherlands delegation was unclear as to which criminal law provisions would be applicable. The EPO explained that the applicable law would be determined according to the rules of international criminal law of the state in which the oath had been taken.

75. Regarding mail irregularities, the *epi* welcomed the proposal to render Article 120 EPC more flexible, but wished to see courier services included in the provision. The EPO pointed out that it was preparing a proposal for a new EPC rule, modelled on the corresponding rule in the PCT, so as to provide a legal safety net for all kinds of delayed transmission to the EPO, including courier services (see now CA/127/98).

76. The *epi* were wholeheartedly in favour of the proposal to reform and simplify the procedure for further processing and restitutio in integrum under Articles 121 and 122 EPC.

77. Upon introducing the point "deregulation", the EPO emphasised the importance of feedback and suggestions from the delegations and from the interested circles for the performance of this exercise. In this context, it was proposed by some delegations (CH, DE, DK) that in reviewing the Implementing Regulations, some more powers should be transferred to the President of the EPO, so as to relieve the Administrative Council of some of its burden.

78. The British delegation insisted on the importance of undertaking this deregulation exercise in a systematic way. In the United Kingdom Patent Office, a "Deregulation Task Force" had been created, which examined the requirements placed on users of the patent system to identify whether these were justified and necessary in a modern age.

79. The Chairman asked the delegations to send proposals for deregulation to the EPO by the end of this year, *ie* December 1998.

80. Regarding the transfer of EPC requirements to the Implementing Regulations, the Belgian delegation emphasised that although flexibility was desirable, it would be

necessary to proceed very carefully. It was suggested that in view of the enormous amount of work which lay ahead, it might be desirable to hire external consultants to assist in the preparations.

81. The EPO stated that it would examine this suggestion, but pointed out that in respect of the detailed legal, procedural and practical knowledge necessary in order to perform these exercises, it was difficult to find qualified and experienced consultants.

82. Regarding the revision of the EPC, the representative of the Commission announced that there were two elements of particular interest to the Commission: the protection of computer programs and the grace period. The Commission intended to publish a communication announcing concrete initiatives in regard of the Community patent, once it had the opinion of the European Parliament regarding the *Green Paper*. It said that it would not wait for the decision of the ECJ on the translation issue (CA/PL 9/98) to formulate a proposal concerning the Community patent.

83. The EPO informed the Committee that the grace period under Article 55 EPC was still being discussed at the level of the Administrative Council. This issue would also be broached by EUROTAB at the end of May. The results of this debate as well as the documents prepared by the participants would be sent to the Commission.

84. The Portuguese delegation expressed concern that the Commission seemed to be forging ahead without taking into account the positions of the EU member states, citing as an example the conclusions of the Commission in the wake of the Hearing in Luxembourg. As far as the referral to the ECJ (CA/PL 9/98) was concerned, it hoped that the court would declare itself incompetent to reach a decision, as the issue before it had a purely political character.

IIb. INTRODUCTION OF BEST (CA/PL 10/98)

85. The EPO introduced the topic and explained that it attempted to integrate the proposals which resulted from the last meeting of this Committee. The document confined itself strictly to the implementation of BEST. A separate document would be prepared as regards the question when competence passed from one division to another within the Office.

86. The Netherlands delegation underscored the importance it attached to the work-sharing between the branches of the EPO located in the Netherlands and in Germany and made clear that any comments of this delegation were to be understood as containing the proviso that this issue must be satisfactorily resolved.

87. The EPO informed that a document dealing with this issue was under preparation. Upon completion, it would be presented to the Netherlands and German delegations, and upon agreement over its content, it would be included in the work of this Committee and eventually form part of the official documents to be signed at the Diplomatic Conference.

88. The Luxembourg delegation questioned why it was considered necessary to modify Section I (b) of the Protocol on Centralisation. The EPO explained that upon the implementation of BEST Office-wide, the Office should enjoy the flexibility to be able to effect a geographical division of technical areas between The Hague and Munich.

89. The Austrian delegation opined that this modification was a matter of practicality and organisation, and went beyond the minimal necessary conditions for the Office-wide implementation of BEST. The Administrative Council should be advised that this change was merely desirable, and not necessary for the implementation of BEST.

90. The Committee unanimously endorsed the proposals for amendment of Articles 16 and 17 EPC as well as Section I of the Protocol on Centralisation.

IIc. AGE LIMIT FOR MEMBERS OF THE BOARDS OF APPEAL (CA/PL 11/98)

91. The EPO introduced the proposed amendment to Article 23(1) EPC. The Austrian delegation suggested that in the German text, the term "Funktion" might be replaced by "Amt".

92. The Committee unanimously endorsed the proposed amendment along with the change proposed by the Austrian delegation.

IId. PROTEST PROCEDURE UNDER THE PCT (CA/PL 12/98)

93. The EPO introduced the proposed deletion of Articles 154(3) and 155(3) EPC.

94. The Spanish delegation, supported by the Danish and German delegations, questioned whether the review panel was really impartial, since the examiner which had sent the invitation to pay additional fees was also a member of the panel.

95. The EPO recognised that Rule 40.2 (d) PCT effectively required impartiality and assured that the procedure of the Office would be brought into line with the PCT. Either Rule 40.2 (d) PCT could be changed, or the decision of the President could be

revised. It explained that the current composition of the review panel did correspond to the composition of the EPO Opposition Divisions where one of the members was the examiner having been involved in the granting of the patent. This was done on grounds of efficiency, as this person has a better grasp of the facts of the case.

96. The German delegation suggested that the existence of this panel might be anchored in the Implementing Regulations, as it presently rested on a decision of the President of the EPO.

97. The Swiss delegation supported the proposed concept, but nevertheless queried whether the suggested removal of a possibility of appeal was in line with the requirements of the TRIPs Agreement.

98. The *epi* opined that this proposal went against Article 6 of the European Convention on the Protection of Human Rights and Fundamental Freedoms as well as the TRIPs Agreement. This latter concern was shared by the Irish delegation.

99. The Spanish delegation, supported by the Hellenic delegation, asserted that it would be in favour of aligning the review procedure with the PCT.

100. The Hellenic delegation, supported by the German delegation, pointed out that Rule 104a EPC would have to be amended in this context.

101. The EPO reminded the Committee that the EPO was the only PCT authority to offer this possibility of appeal. It indicated that it was prepared to anchor the review panel in the Implementing Regulations, or within the framework of deregulation, allow the President to determine its modalities. In any event, at the end of the day, this procedure would be in full compliance with the PCT.

102. The Austrian delegation, supported by the British delegation, opined that the EPO's proposal should be endorsed as it is, and the further changes to be effected could be dealt with later. The reservations of some of the delegations could be brought to the attention of the Administrative Council. The German delegation believed that the interested circles should be heard on this point.

103. The EPO proposed to proceed as follows: a review panel would be provided for in the Implementing Regulations, the composition of this panel could be discussed with the interested circles. Addressing the concerns of the delegations questioning the compatibility of the proposal with the TRIPs Agreement, it was pointed out that there was no possibility for judicial review in the international phase under the PCT.

104. The Committee endorsed the proposed deletion of Articles 154(3) and 155(3) EPC, with the proviso that amendments should result in the inclusion of a provision in the Implementing Regulations affording a protest procedure in conformity with the PCT.

C. MISCELLANEOUS

III. OTHER BUSINESS

IIIa. THE BIOTECHNOLOGY DIRECTIVE

105. The representative of the European Commission reported that the Biotechnology Directive had been voted on by the European Parliament and had been passed with an overwhelming majority. Once it was formally confirmed by the Council, the Directive would be published in the EC Official Journal and thereby enter into force.[1)] EU member states would then have to implement the Directive within two years.

106. With the coming into force of the Directive, the principle of the "*Association Européenne du Transport Routier* case" also applied to the biotech field. According to this principle, the EU member states which had agreed to harmonise their legislation in a given field could no longer express opinions contrary to the harmonised European position in international, non-Community settings. Thus, within international negotiations touching the biotech area, in the future, the EU member states would have a common approach to be represented by the European Commission.

IIIb. THE "MILLENIUM BUG" AND EPO SOFTWARE

107. The Portuguese delegation raised the issue of the "millenium bug", reported on the measures taken by the Portuguese Patent Office to prevent problems with its software, and queried which steps had been taken by the EPO in this respect.

108. The EPO said that it was fully aware of the potential problems and that all software systems were being reviewed. As far as cases were concerned where loss of rights occurred as a result of problems with the software of professional representatives, the Office stated that each case would have to be assessed on its merits.

1) see Official Journal of the European Communities L 213, 30.7.1998, p. 13.

109. The UK delegation mentioned that the Working Party on Technical Information had addressed the issue of year 2000 compliance and produced a paper describing the measures to be undertaken, including extensive testing in the course of 1999, so that it was confident that the EPO systems would be as compliant as possible.

IIIc. RECOGNITION OF PRIORITY RIGHTS WITH NON-WTO COUNTRIES

110. The Austrian delegation reported that in the next AT Patent Bill a new provision would be included allowing the mutual recognition of priority with Taiwan, in that where priority rights were recognised for Austrian first filings by an "Office" which did not fall under the purview of the Paris Convention, a declaration could be made acknowledging mutual recognition of priority rights with that Office. Supported by the Swiss delegation, the Austrian delegation went on to propose that Article 87(5) be revised so that the notions of "State" and of "bilateral or multilateral agreements" contained therein, would be broadened to resemble the above concept.

111. The EPO reported that letters had been sent to the EU Commission, suggesting that the issue of mutual recognition of priority rights could be addressed in their dealings with Taiwan. Additionally, Taiwan was contacted directly, with a view to explaining the possibility of establishing a reciprocal system under Article 87(5) EPC, considering that arrangements of this nature already existed on a de facto basis between Taiwan and France, Germany and Switzerland. There had been no reply from either party so far.

112. The Belgian delegation reported that under Belgian patent law, priority rights were provided for Paris Union countries as well as on the basis of international agreements, *ie* under the TRIPs Agreement. Therefore, there was no need to amend Belgian law. As far as Taiwan was concerned, it was impossible to have an agreement with Taiwan, which constituted an insuperable obstacle under present legislation.

113. The Chairman reported that India had published a list of countries which recognised priority rights for Indian first filings, and to which it consequently extended priority rights on a reciprocal basis. This list included Belgium.

114. The Swiss delegation observed that the most-favoured-nation provisions of the TRIPs Agreement were excluded from the application of the transitional provisions, so that if India granted priority rights to one WTO member, it was under the obligation to grant them for all WTO countries (Note: India will become a Paris Union member as at 7 December 1998).

IV. WORK PROGRAMME, DATE AND VENUE OF NEXT MEETING

115. The Committee agreed to include the following items in its work programme for the next meeting:

- Revision of the EPC: points selected from document CA/16/98
- Amendments to the Implementing Regulations

116. The Chairman thanked the delegations, the Council Secretariat and particularly the interpreters and closed the meeting.

117. The next meeting was scheduled for 3-5 November 1998, in Munich.

The Committee on Patent Law approved the draft minutes set out in this document on 3 November 1998.

Munich, 3 November 1998

For the Committee on Patent Law
The Chairman

P. Mühlens

Stand: 13.05.1998

7. Sitzung des Ausschusses "Patentrecht"
7th Meeting of the Committee on Patent Law
7ème réunion du comité "Droit des brevets"

München, 12.-13.5.1998

Teilnehmerverzeichnis
List of participants
Liste des participants

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