MINUTES

of the

31st meeting of the

COMMITTEE ON PATENT LAW

Munich, 2 November 2006

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The Committee on Patent Law held its 31st meeting in Munich on 2 November 2006, with Mr Mihály FICSOR (HU) in the chair. The chairman welcomed the participants (listed in Annex 1), in particular the newcomers on various delegations: Ms Brigitte Spiegeler (NL), Ms Raquel Sampedro Calle (ES) and Ms Despoina Spanou (GR).

1. Adoption of the provisional agenda (CA/PL 27/06 Rev. 1)

1. The committee adopted the provisional agenda set out in CA/PL 27/06 Rev. 1.

Under Article 9(5) of the Administrative Council's rules of procedure, which apply mutatis mutandis to the committee, the committee decided that documents CA/PL 29/06 Add.1 and CA/PL 30/06 e, which were received late, would stay on the agenda.

2. Amendments to the Implementing Regulations to the EPC 2000 (CA/PL 29/06 + Add. 1 + CA/PL 30/06 e)

2. The chairman reminded the delegations that the main aim of the exercise at hand was to have an up-dated version of the Implementing Regulations ready in time for the entry into force of the European Patent Convention 2000 ("EPC"). This did not mean that the new Implementing Regulations, once in force, could not be changed again in future. The purpose of the committee's 31st meeting was to verify that CA/PL 29/06 accurately reflected the results obtained at the committee's 30th meeting when discussions on the substance had in principal been declared closed. Any further change requests concerning the substance of the draft Implementing Regulations had to be endorsed by the committee. The latter was no drafting committee and should therefore refrain from working as such.

3. The Office introduced CA/PL 29/06 +Add. 1 together with a "non-paper" set out in Annex 2.

The following references to articles or rules refer to articles or rules of the revised versions of the Implementing Regulations, the EPC 2000 or the Rules relating to Fees, as the case may be.

The committee gave a favourable opinion on changes to the following Rules:

RULE 11(3)
("Allocation of duties to the departments of first instance")

4. The Office, in reply to a question raised by the Belgian delegation, confirmed that it had been long-standing Office practice to entrust to so-called formalities officers the formal aspects of an application in the Search, Examining and Opposition Divisions. The amendment to Rule 11(3) simply gave a formal legal basis to this practice.

RULE 1
("Written proceedings")

5. The Office suggested deleting the words "or on screen". It had been convinced by the arguments of the staff representatives and the *epi* in this regard. In practice, three dimensional pictures had to be printed and were examined on paper, which posed no difficulty to experts. It would require a special technology to move three dimensional pictures on screen. This would involve the use of special hardware and software, which neither the Office nor practitioners possessed.

6. The Swedish delegation was concerned that the new wording implied mandatory paper filings. The Office replied that this was certainly not the case. At the Swedish delegation's request, it confirmed that it would ensure that the background to this rule was fully explained in the Guidelines for Examination. It would also inform users by giving presentations, on the phone, by email etc.

7. The chairman explained that the proposed wording excluded documents which could only be viewed on screen. It ensured that documents could in principle be reproduced on paper. This did not mean that they had to be filed on paper.

8. The Romanian delegation, prepared to compromise, nevertheless remarked that it would have preferred to delete the words "on paper or on screen". Besides, the new wording did not allow sufficient flexibility to accommodate future technological developments. Lastly, it pointed out that CA/PL 30/06 did not accurately reflect its comments made at the last committee meeting. It had not found the words "or on screen" acceptable.

9. The chairman recalled that the Implementing Regulations could be changed in future, if deemed necessary in the light of technological advances.

RULE 33(6)
("Availability of biological material")

10. The Office suggested that for the sake of consistency, Rule 33(6) include a reference to Rule 34.

RULE 34
("New deposit of biological material")

11. The Office suggested that wording consistent with Article 14(1) of the European Directive on the Legal Protection of Biotechnological Inventions 98/44/EC be used.

12. The *epi* representative remarked that the first mention of the term "depositary institution" occurred in Rule 31(1)(a). A corresponding change should be made in that Rule. The Office agreed with this suggestion.

RULE 78(1)
("Procedure where the proprietor of the patent is not entitled")

13. The Office suggested making reference to Rule 14, paragraphs 2 **to 4**. Rule 14(4) concerned time periods which were interrupted by a stay of proceedings. The change would detail the legal consequences of a stay of opposition proceedings.

RULE 109(3)
("Procedure in dealing with petitions for review")

14. The *epi* representative suggested deleting the words "as filed". Rules 108(1) and (2) provided for deficiencies in the filed petition to be remedied. The final form of the petition might thus conceivably differ from the petition as filed. Moreover, the German version of Rule 109(3) did not contain the term "as filed".

15. The Office explained that Rule 109(3) referred to the initial stage of the procedure when the three-member Enlarged Board of Appeal examined whether a petition for review was clearly inadmissible or unallowable. This examination would happen within a tight timeframe and on the basis of the documents provided by the petitioner. It agreed to the deletion of the words “as filed” as this wording corresponded with the Implementing Regulations adopted by the Administrative Council in 2002. In the corresponding explanatory notes it was stated that “this decision of the three person body shall be decided on the basis of the evidence and the reasons submitted in accordance with Article 112a(4)”, i.e. on the basis of everything submitted within the deadline for the petition for review. Such wording would also tally with the interpretation given by the Enlarged Board of Appeal at the committee's 30th meeting on the Amendments to the Rules of Procedure of the Enlarged Board of Appeal. Allowing items submitted after the deadline to form part of the petition for review would be at the Enlarged Board of Appeal's discretion.

RULE 123(1)
("Conservation of evidence")

16. The *epi* representative felt that the English rendering of "mesure d'instruction" ("hear oral evidence or conduct inspections...") was too narrow compared to the French and German versions.

17. The Office replied that this part of the Rule had never been invoked before. It explained the concept of "Beweissicherung", which allowed all types of "Beweismittel". It implied that evidence was taken in order to preserve evidence for further proceedings.

18. The committee agreed that the English language version of Rule 123(1) should be aligned with the French and German versions.

19. The chairman remarked that it might be helpful to consult the EU directive on the enforcement of intellectual property rights for the choice of wording concerning the relevant precautionary measures.

20. The *epi* representative pointed out that the French term "mesure d'instruction" was in turn wider than the German term. Different legal cultures were obviously involved.

On the following Rules, amendments were suggested but not endorsed by the committee:

RULE 30(3)
("Requirements of European patent applications relating to nucleotide and amino acid sequences")

21. The *epi* representative explained that an unduly harsh sanction was foreseen. It was unclear why any sequence listing mentioned in the application had to be filed and why a sequence listing could not be deleted after it had been filed. The *epi* also wondered whether the provision was PLT compliant.

22. The Office explained that the Rule was equivalent to Rule 13ter and Rule 5(2) PCT. Full and timely sequence listings were needed for an appropriate and timely European search report. An application could be amended once the search report had been issued. The Office recommended not including in the disclosure those sequence listings which were not needed. Lastly, it pointed out that further processing was available.

23. The UK delegation, by way of an initial observation, pointed out that Rule 13ter PCT did not envisage the refusal of the application in similar circumstances. The late furnishing of sequence listings would seem to be a formal, not a substantive, deficiency.

RULE 56
("Missing parts of the description or missing drawings")

24. The UK delegation pointed out that it remained unclear what would happen if the description contained a reference to part of a drawing and such part were missing in the drawing. It wondered whether in such circumstances the whole drawing would be deemed not to have been filed.

25. The Office explained that the wording "missing parts of drawings" had deliberately been avoided in Rule 56(1) as the Office did not wish to have an obligation to check whether drawings filed were complete. Such wording had not been included in other parts of Rule 56 either; applicants could not file parts of drawings late as missing parts, but always had to file the complete drawing. If an application contained a reference to a complete drawing and such drawing had not been filed, then the reference would be deleted. However, this would normally not be the case with partially filed drawings, references to which would usually be allowed to remain in the document. The UK delegation was satisfied with this explanation.

26. The *epi* representative suggested that the word "formal" be inserted before "references" in Rule 56(4)(b). This would ensure that other references were retained.

27. The Office replied that the wording in question was derived from the current Rule 43.

28. The chairman warned against introducing new concepts into the Implementing Regulations. He doubted whether the Implementing Regulations distinguished between formal references and other references.

29. The Office endorsed the chairman's remarks, suggesting that this issue be dealt with on the level of the Guidelines for Examination.

30. At the chairman's request, the Office confirmed that the committee would be kept informed on progress with the Guidelines for Examination. These would, as usual, be issued by the President after consulting a working group consisting, among others, of the *epi* and UNICE.

31. The *epi* representative requested that a comma be deleted in Rule 56(1), which would then read "parts of the description or drawings". This would ensure that Rule 56 applied to parts of drawings as well as to drawings.

32. The UK delegation disagreed.

33. The German delegation supported the *epi*'s comments on Rule 56(3) set out in CA/PL 30/06.

34. The *epi* representative next withdrew these comments.

35. The Office explained that Rule 56 defined the deemed filing date and the contents of the application on the filing date. There was therefore no need to include a different wording.

36. The German delegation provisionally accepted this explanation.

RULE 68
("Form of the publication of European patent applications and European search reports")

37. The *epi* representative explained that preferably missing parts of an application should also be published. At the very least, notice of missing parts should be given in the publication of the application.

38. The Office confirmed that late-filed missing parts were deemed part of the application as filed and would be published. It would consider further the *epi*'s comment.

RULE 146
("Communication of information contained in the files")

39. The *epi* representative suggested replacing "However" with "Alternatively".

40. The Office conceded that file inspection was an alternative to the Office communicating information concerning a file. However, the latter option required payment of an administrative fee whereas the former did not. Hence it would seem more consistent to use the term "however".

New RULE 156a

41. The *epi* representative pointed out that a successful request for re-establishment of rights under Article 122 EPC and a successful petition for review under Article 112a EPC might not lead to the desired results if a loss of rights were to occur through non-payment of renewal fees. Most national laws did not foresee provisions allowing payment of renewal fees in cases of revoked European patents or during the period of loss of rights. A new Rule 156a should provide for a possibility to pay renewal fees in these circumstances.

42. The chairman doubted whether this matter, which came within the competence of national legislators, could be dealt with in the Implementing Regulations.

43. The Office agreed. While the problem was important it was not new. A European patent, once granted, became subject to national law. The EPC did not contain any provisions of the nature suggested. It was therefore doubtful whether such provisions could be included at the level of the Implementing Regulations. The delegations were first invited to clarify the national law and practice in this regard.

44. The chairman believed that a comparative study on this issue would be useful.

45. The committee noted CA/PL 29/06 Add. 1 and CA/PL 30/06 e. It further noted the Office's "non-paper" set out in Annex 2 and two *epi* "non-papers", which concerned the French and English text of the draft Implementing Regulations to the EPC 2000.

46. At the chairman's suggestion, the committee mandated the Office to examine whether a number of further editorial suggestions, made by the *epi* and possibly to be made by various delegations, should be incorporated into the final text of the Implementing Regulations to the EPC 2000. Delegations with native speakers of official languages were invited to address their comments on the *epi* non-papers to the Office within a few days from the end of the meeting. While the Office could not include the *epi* in its drafting committee, it would make every effort to discuss outstanding points bilaterally with the *epi*. This approach was endorsed by the committee.

47. The committee gave a unanimous favourable opinion on CA/PL 29/06, including the amendments proposed by the Office during the meeting (delegations present: 27; for: 27).

3. EPC 2000 - Amendment of the Rules relating to Fees (RFees) (CA/113/06)

48. The Office introduced CA/113/06, which had been submitted as CA/F 13/06 to the committee at its 30th meeting and to the Budget and Finance Committee at its 89th meeting. It had been unanimously approved by both committees. A further change had been made to Article 14(1) RFees in view of a change to Rule 6(3) EPC. Secondly, revised Article 2(3) of the draft decision amending the RFees now made clear that payments of fees made before the entry into force of the new fee regime remained governed by the existing regime.

49. The *epi* representative commented on Article 2(12) of the RFees. In some cases of accumulated requirements such as supplying a procedural document and paying a fee, the fee for further processing would have to be paid twice. It was unfair to punish applicants twice for what was essentially one mistake. In the absence of pre-printed forms or written requests sent to the applicant oversights were very likely to happen. The further processing fee payable should be the higher of 50% of the relevant fee and EUR 210.

50. The Office explained that a general provision on cumulative fees already existed. The issue raised by the *epi* was not of practical relevance to PCT applications entering the national phase. In the case of a fee for further processing following a late filing of a sequence listing it was, however, conceivable that a fee of EUR 210 plus 50% of the late furnishing fee, i.e. EUR 100 was payable. Although the Budget and Finance Committee had not commented on this issue, the Administrative Council could choose to discuss the matter if it so wished. It was, however, too late to consult the Budget and Finance Committee anew.

51. The chairman remarked that the *epi*'s comment related to a provision in the RFees which was unaffected by the amendment to the Implementing Regulations. The item was likely to become an A-item at the December 2006 Council meeting. The committee could not re-open the issue.

52. The committee noted CA/113/06 as well as the comments made by the *epi*.

4. SPLT issues

53. The committee agreed not to exclude observer delegations from its discussion of SPLT issues.

54. The chairman introduced the topic.

55. The chair of Working Group I (Group B+), Ms Anne REJNHOLD JØRGENSEN (DK) (the "WG I chair") described the meeting of Group B + held in Geneva on 24 September 2006 as a historical breakthrough. Following questions from the Office, she explained that a new draft text in treaty language would be circulated to all members of the Working Group I the following day. Next, she explained that the expression "no provision on experimental or secret prior use" in the so-called "chair proposal" meant that an SPLT signatory state would not be allowed to have any provision on such issues. Among the elements of the chair proposal, only "secret prior art" and "anti-self collision" were in all likelihood not yet ready for decision. In any case, nothing was agreed until everything had been agreed. It was regrettable that Europe was unable to agree on a common position on the "grace period". It would be regrettable if Europe were not to be able to broaden the mandate given to the President of the European Patent Office in connection with Trilateral matters also to include SPLT issues. It was evident that the SPLT negotiation partners remained fully committed to continuing the harmonisation process.

56. The Finnish delegation, representing the country holding the EU Presidency in the second half of 2006, reported on the meeting of the Working Party of the EU Council held on 27 October 2006. The EU had maintained its common position on the "grace period". At the Office's request, the Finnish delegation confirmed that the EU's only common position concerned the grace period. It had not tried to form a common position on other issues in the SPLT package. Sadly, the positions differed.

57. The chairman, whose views were endorsed by the Finnish delegation, explained that the EU position on the "grace period" was based on the assumption that pending applications were published within 18 months of the priority date.

58. The German delegation believed that it was of course difficult for the negotiating partners to attend the Tokyo meeting of Working Group 1 of the Group B+, to be held on 20-21 November 2006, only to state that Europe had re-examined its position and found that it continued to support it. The German delegation, whose views were subsequently endorsed by the Belgian delegation, highlighted four areas in which it could not accept the chair proposal: (1) "secret prior art" and "anti-self collision"- it had real difficulty with the chair proposal and preferred to postpone these items for the time being; (2) the "declaration requirement"- Europe had previously indicated that it could be flexible on this point. This position should not be compromised; (3) the duration of the "grace period"- it could not accept the chair proposal; (4) "third party rights"- the "European solution" should be chosen. Items (3) and (4) were connected for the purposes of negotiation strategy. To avoid attending the Tokyo meeting in vain, Europe should consider in which places the chair proposal needed amending. It should subsequently agree on a new proposal.

59. The WG I chair remarked that the next draft SPLT text would include a European model on "third party rights" and would take account of the German delegation's reservations.

60. The UK delegation believed that Europe could make concessions on the duration of the "grace period" in exchange for a harmonised "first-to-file system". Flexibility on the "declaration requirement" could mean various things. If an applicant were likely to benefit from a "grace period", he should "play his part". The "declaration requirement" brought legal certainty to third parties. Lastly, the UK delegation could support the proposal of holding another meeting on SPLT issues prior to the Tokyo meeting.

61. The Belgian delegation felt that the important "declaration requirement", which had several meanings and was also important to users, could and should be discussed further.

62. The French delegation declared that the "grace period" was part of the overall negotiation package. Europe's expressions of flexibility had to be assessed as a function of the final results which Europe could gain in the negotiations. The chair proposal was a basic platform and the Tokyo meeting should be viewed as just another stage in the negotiations.

63. The Polish delegation was flexible, within the ambit of what would be settled by the EU delegations, on the "declaration requirement" and "secret prior art". The same was true for the duration of the "grace period". A six months' period should be offered in the first instance. The acceptance of the "declaration requirement" should be conditional on the establishment of an exact date from which onwards the responsibilities of third parties would start running.

64. The *epi* representative explained that the *epi* remained opposed to any kind of grace period. Should one be conceded, a formal declaration should be mandatory as third parties needed to know whether or not they could rely on a piece of prior art.

65. The chairman, by way of summary, remarked that the delegations disagreed on which elements of the chair proposal Europe should disagree with. There had been warnings against expecting too much from the Tokyo meeting or raising the expectations of the non-European partners. This might cause disappointment, which could in turn damage the whole harmonisation process. All avenues should be made use of to come to a unified position. Personally, he believed that being reliable as a negotiating partner also implied stating on which issues one disagreed. SPLT issues were interlinked. Europe should receive a benefit in return for every concession made. Harmonisation should not become an end in itself. A cautious approach should be taken as the stakes, such as mutual recognition, were high. There were still some uncertainties around certain issues and other partners were likewise reluctant to make concessions. The chair proposal had been adopted as a basic platform for further work in Geneva. However, certain elements of that package could and should be debated in Tokyo, where discussions should not be limited to drafting points, even at the risk of disappointing the non-European partners. Lastly, the definition of "platform for further work" was perhaps not clear.

66. The Belgian delegation agreed that harmonisation for harmonisation's sake was not in Europe's interests. The agreement reached in Geneva did not mean that certain points could not be discussed again. The final package had to serve European industry and respect the safeguards given in the EPC.

67. The Netherlands delegation emphasised that Europe had to be seen externally as a reliable and credible partner. Unless it stuck to the basic platform agreed in Geneva, there was no point in attending the Tokyo meeting. The platform should be taken as a starting point for negotiations, as agreed in Geneva. It consisted of a 12 months' "grace period", the "first-to-file principle" and the abolition of the "Hilmer doctrine". If the 12 months' "grace period" could not be agreed upon, there was no basic package left.

68. The German delegation endorsed the chairman's summary. Perceptions of what had been agreed in Geneva clearly differed. The EU had not yet found a common position. The non-European partners should be forewarned so as to avoid certain disappointment.

69. The WG I chair stressed that the time had come for Europe to "make up its mind". Perhaps those member states which did not have reservations should carry on with the negotiations. Otherwise there was a risk of never finding agreement at all. The chair proposal was a minimum package with no back-up plan. Europe should officially put the harmonisation process on hold if it failed to agree among itself. Otherwise there was a risk of losing everything which had been attained with such difficulty over the last thirty years.

70. The committee noted the oral progress reports given by the chair of Working Group I (Group B+), Ms Anne Rejnhold Jørgensen, and the Finnish delegation, representing the country holding the EU Presidency in the second half of 2006.

71. It also noted the exchange of views on SPLT matters.

5. Any other business

72. The committee noted the Office's oral status report on the revision of the Guidelines for Examination in the light of the revision of the Implementing Regulations to the EPC 2000. The Guidelines would be published in all three languages in August/September 2007. The English version, which would be prepared by the end of March 2007, might be published earlier as a draft.

The Committee on Patent Law approved the minutes contained in this document on 7 May 2007.

Munich, 7 May 2007

For the Committee on Patent Law
The Chairman

Mihály FICSOR

ANNEX 1 LIST OF PARTICIPANTS

CA/PL 28/06 Rev. 1

Orig.: de, en, fr

München/Munich, 6.11.2006

BETRIFFT:	Teilnehmerliste der 31. Sitzung des Ausschusses "Patentrecht" (München, 2. November 2006)
SUBJECT:	List of participants of the 31st meeting of the Committee on Patent Law (Munich, 2 November 2006)
OBJET :	Liste des participants de la 31e réunion du comité "Droit des brevets" (Munich, le 2 novembre 2006)
VERFASSER:	Ratssekretariat
DRAWN UP BY:	Council Secretariat
ORIGINE :	Le secrétariat du Conseil
EMPFÄNGER:	Ausschuss "Patentrecht" (zur Unterrichtung)
ADDRESSEES:	Committee on Patent Law (for information)
DESTINATAIRES :	Le comité "Droit des brevets" (pour information)

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Vice-President for Legal Affairs
Hungarian Patent Office
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2. Zwischenstaatlic Organisationen - Inter-Governmental Organisations - Organisations intergouvernementales

World Intellectual Property Organization
Organisation Mondiale de la Propriété Intellectuelle (WIPO/OMPI)

Mr Philippe BAECHTOLD	Head, Patent Law Section, Industrial Property Law Division

3. Nichstaatliche Organisationen - Non-Governmental Organisations - Organisations non-gouvernementales

Institut der beim Europäischen Patentamt zugelassenen Vertreter
Institute of Professional Representatives before the EPO
Institut des mandataires agréés près l'Office européen des brevets

Mr John BROWN	Secretary of the Harmonisation Committee
Mr Edward LYNDON-STANFORD	Chairman of the Harmonisation Committee and governor of the EPC 2000 sub-group of EPPC
Frau Gabriele LEIßLER-GERSTL	Patentanwältin
Mr Martin HATZMANN	Member of the European Patent Practice Committee (EPPC)

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ANNEX 2 NON-PAPER SUBMITTED BY THE OFFICE TO THE COMMITTEE AT IT'S 31ST MEETING IN MUNICH

Regel 1 Schriftliches Verfahren	**Rule 1** Written proceedings	**Règle 1** Procédure écrite
Im schriftlichen Verfahren vor dem Europäischen Patentamt ist das Erfordernis der Schriftform erfüllt, wenn sich der Inhalt der Unterlagen in lesbarer Form **auf Papier** reproduzieren lässt.	In written proceedings before the European Patent Office, the requirement to use the written form shall be satisfied if the content of the documents can be reproduced in a legible form **on paper**.	Dans la procédure écrite devant l'Office européen des brevets, il est satisfait à l'exigence relative à l'utilisation de la forme écrite si le contenu des documents peut être reproduit lisiblement **sur papier**.

Regel 33 Zugang zu biologischem Material	**Rule 33** Availability of biological material	**Règle 33** Accès à une matière biologique
(1) Vom Tag der Veröffentlichung der europäischen Patentanmeldung an ist das nach Maßgabe der Regel 31 hinterlegte biologische Material jedermann und vor diesem Tag demjenigen, der das Recht auf Akteneinsicht nach Artikel 128 Absatz 2 hat, auf Antrag zugänglich. Vorbehaltlich der Regel 32 wird der Zugang durch Herausgabe einer Probe des hinterlegten Materials an den Antragsteller hergestellt.	(1) Biological material deposited in accordance with Rule 31 shall be available upon request to any person from the date of publication of the European patent application and to any person having the right to inspect the files under Article 128, paragraph 2, prior to that date. Subject to Rule 32, such availability shall be effected by the issue of a sample of the biological material to the person making the request (hereinafter referred to as "the requester").	(1) A compter du jour de la publication de la demande de brevet européen, la matière biologique déposée conformément à la règle 31 est, sur requête, accessible à toute personne [...] et, avant cette date, à toute personne ayant le droit de consulter le dossier en vertu de l'article 128, paragraphe 2. Sous réserve de la règle 32, cette accessibilité est réalisée par la remise au requérant d'un échantillon de la matière biologique déposée.
(2) Die Herausgabe erfolgt nur, wenn der Antragsteller sich gegenüber dem Anmelder oder Patentinhaber verpflichtet hat, das biologische Material oder davon abgeleitetes biologisches Material Dritten nicht zugänglich zu machen und es lediglich zu Versuchszwecken zu verwenden, bis die	(2) Said issue shall be made only if the requester has undertaken vis-à-vis the applicant for or proprietor of the patent not to make the biological material or any biological material derived therefrom available to any third party and to use that material for experimental purposes only,	(2) Cette remise n'a lieu que si le requérant s'est engagé à l'égard du demandeur ou du titulaire du brevet à ne pas communiquer à des tiers la matière biologique ou une matière biologique qui en est dérivée et à n'utiliser cette matière qu'à des fins expérimentales jusqu'à la date à

Patentanmeldung zurückgewiesen oder zurückgenommen wird oder als zurückgenommen gilt oder das europäische Patent in allen benannten Staaten erloschen ist, sofern der Anmelder oder Patentinhaber nicht ausdrücklich darauf verzichtet.	until such time as the patent application is refused or withdrawn or deemed to be withdrawn, or before the European patent has expired in all the designated States, unless the applicant for or proprietor of the patent expressly waives such an undertaking.	laquelle la demande de brevet est rejetée ou retirée ou réputée retirée, ou à laquelle le brevet européen s'éteint dans tous les Etats désignés, à moins que le demandeur ou le titulaire du brevet ne renonce expressément à un tel engagement.
Die Verpflichtung, das biologische Material nur zu Versuchszwecken zu verwenden, ist hinfällig, soweit der Antragsteller dieses Material aufgrund einer Zwangslizenz verwendet. Unter Zwangslizenzen sind auch Amtslizenzen und Rechte zur Benutzung einer patentierten Erfindung im öffentlichen Interesse zu verstehen.	The undertaking to use the biological material for experimental purposes only shall not apply in so far as the requester is using that material under a compulsory licence. The term "compulsory licence" shall be construed as including ex officio licences and the right to use patented inventions in the public interest.	L'engagement de n'utiliser la matière biologique qu'à des fins expérimentales n'est pas applicable dans la mesure où le requérant utilise cette matière pour une exploitation résultant d'une licence obligatoire. L'expression "licence obligatoire" est entendue comme couvrant les licences d'office et tout droit d'utilisation dans l'intérêt public d'une invention brevetée.
(3) Abgeleitetes biologisches Material im Sinne des Absatzes 2 ist jedes Material, das noch die für die Ausführung der Erfindung wesentlichen Merkmale des hinterlegten Materials aufweist. Die in Absatz 2 vorgesehenen Verpflichtungen stehen einer für die Zwecke von Patentverfahren erforderlichen Hinterlegung eines abgeleiteten biologischen Materials nicht entgegen.	(3) For the purposes of paragraph 2, derived biological material shall mean any material which still exhibits those characteristics of the deposited material which are essential to carrying out the invention. The undertaking under paragraph 2 shall not impede any deposit of derived biological material necessary for the purpose of patent procedure.	(3) On entend par matière biologique dérivée aux fins du paragraphe 2 toute matière qui présente encore les caractéristiques de la matière déposée essentielles à la mise en oeuvre de l'invention. Les engagements visés au paragraphe 2 ne font pas obstacle à un dépôt d'une matière biologique dérivée, nécessaire aux fins de la procédure en matière de brevets.

(4) Der in Absatz 1 vorgesehene Antrag ist beim Europäischen Patentamt auf einem von diesem anerkannten Formblatt einzureichen. Das Europäische Patentamt bestätigt auf dem Formblatt, dass eine europäische Patentanmeldung eingereicht worden ist, die auf die Hinterlegung des biologischen Materials Bezug nimmt, und dass der Antragsteller oder der von ihm nach Regel 32 benannte Sachverständige Anspruch auf Herausgabe einer Probe dieses Materials hat. Der Antrag ist auch nach Erteilung des europäischen Patents beim Europäischen Patentamt einzureichen.	(4) The request referred to in paragraph 1 shall be submitted to the European Patent Office on a form recognised by that Office. The European Patent Office shall certify on the form that a European patent application referring to the deposit of the biological material has been filed, and that the requester or the expert nominated by him under Rule 32 is entitled to the issue of a sample of that material. After grant of the European patent, the request shall also be submitted to the European Patent Office.	(4) La requête visée au paragraphe 1 est adressée à l'Office européen des brevets au moyen d'un formulaire agréé par lui. L'Office européen des brevets certifie sur ce formulaire qu'une demande de brevet européen faisant état du dépôt de la matière biologique a été déposée et que le requérant ou l'expert qu'il a désigné conformément à la règle 32 a droit à la remise d'un échantillon de cette matière. La requête est également adressée à l'Office européen des brevets après la délivrance du brevet européen.
(5) Das Europäische Patentamt übermittelt der Hinterlegungsstelle und dem Anmelder oder Patentinhaber eine Kopie des Antrags mit der in Absatz 4 vorgesehenen Bestätigung.	(5) The European Patent Office shall transmit a copy of the request, with the certification provided for in paragraph 4, to the depositary institution and to the applicant for or the proprietor of the patent.	(5) L'Office européen des brevets transmet à l'autorité de dépôt, ainsi qu'au demandeur ou au titulaire du brevet, une copie de la requête assortie de la certification prévue au paragraphe 4.
(6) Das Europäische Patentamt veröffentlicht in seinem Amtsblatt das Verzeichnis der Hinterlegungsstellen und Sachverständigen, die für die Anwendung der Regeln 31 bis ~~33~~**34** anerkannt sind.	(6) The European Patent Office shall publish in its Official Journal the list of depositary institutions and experts recognised for the purpose of Rules 31 to ~~33~~**34**.	(6) L'Office européen des brevets publie au Journal officiel la liste des autorités de dépôt habilitées et des experts agréés aux fins de l'application des règles 31 à ~~33~~**34**.

Regel 34 Erneute Hinterlegung von biologischem Material	**Rule 34** New deposit of biological material	**Règle 34** Nouveau dépôt de matière biologique
Ist nach Regel 31 hinterlegtes biologisches Material bei der anerkannten Hinterlegungsstelle nicht mehr zugänglich, so gilt die Unterbrechung der Zugänglichkeit als nicht eingetreten, wenn dieses Material ~~gemäß dem~~ **bei einer anerkannten Hinterlegungsstelle unter denselben Bedingungen wie denen des** Budapester Vertrag**s** über die internationale Anerkennung der Hinterlegung von Mikroorganismen für die Zwecke von Patentverfahren vom 28. April 1977 erneut hinterlegt wird und dem Europäischen Patentamt innerhalb von vier Monaten nach dem Tag der erneuten Hinterlegung eine Kopie der von der Hinterlegungsstelle ausgestellten Empfangsbescheinigung unter Angabe der Nummer der europäischen Patentanmeldung oder des europäischen Patents übermittelt wird.	If biological material deposited in accordance with Rule 31 ceases to be available from the recognised depositary institution, an interruption in availability shall be deemed not to have occurred if a new deposit of that material is made ~~in accordance with~~ **with a recognised depositary institution on the same terms as those laid down in** the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure of 28 April 1977, and if a copy of the receipt of the new deposit issued by the depositary institution is forwarded to the European Patent Office within four months of the date of the new deposit, stating the number of the European patent application or of the European patent.	Si de la matière biologique déposée conformément à la règle 31 cesse d'être disponible auprès de l'autorité de dépôt habilitée, l'interruption de l'accessibilité est réputée non avenue à condition qu'un nouveau dépôt de cette matière ait été effectué ~~conformément au~~ **auprès d'une autorité de dépôt habilitée dans les mêmes conditions que celles prévues par le** Traité de Budapest sur la reconnaissance internationale du dépôt des micro-organismes aux fins de la procédure en matière de brevets du 28 avril 1977 et qu'une copie du récépissé de ce nouveau dépôt délivré par l'autorité de dépôt, accompagnée de l'indication du numéro de la demande de brevet européen ou du brevet européen, ait été communiquée à l'Office européen des brevets dans un délai de quatre mois à compter de la date du nouveau dépôt.

Regel 78 Verfahren bei mangelnder Berechtigung des Patentinhabers	**Rule 78** Procedure where the proprietor of the patent is not entitled	**Règle 78** Procédure prévue lorsque le titulaire du brevet n'est pas une personne habilitée
(1) Weist ein Dritter dem Europäischen Patentamt während eines Einspruchsverfahrens oder während der Einspruchsfrist nach, dass er gegen den Inhaber des europäischen Patents ein Verfahren eingeleitet hat mit dem Ziel, eine Entscheidung im Sinne des Artikels 61 Absatz 1 zu erwirken, so wird das Einspruchsverfahren ausgesetzt, es sei denn, der Dritte erklärt dem Europäischen Patentamt gegenüber schriftlich seine Zustimmung zur Fortsetzung des Verfahrens. Diese Zustimmung ist unwiderruflich. Das Verfahren wird jedoch erst ausgesetzt, wenn die Einspruchsabteilung den Einspruch für zulässig hält. Regel 14 Absätze 2 ~~und 3~~ **bis 4** ist entsprechend anzuwenden.	(1) If a third party provides evidence, during opposition proceedings or during the opposition period, that he has instituted proceedings against the proprietor of the European patent, seeking a decision within the meaning of Article 61, paragraph 1, opposition proceedings shall be stayed unless the third party communicates to the European Patent Office in writing his consent to the continuation of such proceedings. Such consent shall be irrevocable. However, proceedings shall not be stayed until the Opposition Division has deemed the opposition admissible. Rule 14, paragraphs 2 ~~and 3~~ **to 4**, shall apply *mutatis mutandis*.	(1) Si, lors d'une procédure d'opposition ou au cours du délai d'opposition, un tiers apporte la preuve qu'il a introduit une procédure contre le titulaire du brevet européen afin d'obtenir une décision au sens de l'article 61, paragraphe 1, la procédure d'opposition est suspendue, à moins que ce tiers ne déclare par écrit à l'Office européen des brevets qu'il consent à la poursuite de la procédure. Ce consentement est irrévocable. Toutefois, la procédure n'est suspendue que lorsque la division d'opposition considère l'opposition recevable. La règle 14, paragraphes 2 ~~et 3~~ **à 4**, est applicable.
(2) Ist ein Dritter nach Artikel 99 Absatz 4 in Bezug auf einen oder mehrere benannte Vertragsstaaten an die Stelle des bisherigen Patentinhabers getreten, so kann das im Einspruchsverfahren aufrechterhaltene europäische Patent für diesen Staat oder diese Staaten unterschiedliche Patentansprüche, Beschreibungen und Zeichnungen enthalten.	(2) Where a third party has, in accordance with Article 99, paragraph 4, replaced the previous proprietor for one or some of the designated Contracting States, the patent as maintained in opposition proceedings may, for these States, contain claims, a description and drawings different from those for the other designated States.	(2) Si un tiers a été substitué, en vertu de l'article 99, paragraphe 4, au titulaire précédent pour un ou plusieurs Etats contractants désignés, le brevet européen maintenu dans la procédure d'opposition peut contenir pour ces Etats des revendications, une description et des dessins différents de ceux que le brevet comporte pour d'autres Etats désignés.