

DECISION OF THE ADMINISTRATIVE COUNCIL
of 7 December 2006
revising the Rules of Procedure of the
Administrative Council of the European Patent
Organisation

THE ADMINISTRATIVE COUNCIL OF THE EUROPEAN PATENT ORGANISATION,

Having regard to the European Patent Convention, and in particular Article 33,
paragraph 2(b) and (e), thereof,

HAS DECIDED AS FOLLOWS:

Article 1

The Rules of Procedure of the Administrative Council of 19 October 1977, last amended
on 28 June 2001 and 7 June 2002, shall be replaced by the following text:

"THE ADMINISTRATIVE COUNCIL OF THE EUROPEAN PATENT ORGANISATION,

Having regard to the European Patent Convention and in particular Article 33,
paragraph 2(e), thereof,

HAS ADOPTED THE FOLLOWING RULES OF PROCEDURE:

Part 1: Attendance at meetings

Article 1

Members

- (1) The names of the Representative and the alternate Representative (hereinafter referred to as "Members") appointed by each Contracting State to the Administrative Council (hereinafter referred to as the "Council") in accordance with Article 26, paragraph 1, of the European Patent Convention shall be notified by that State to the President of the European Patent Office. The President of the European Patent Office shall notify the Contracting States and Members thereof.

- (2) Members shall take up their duties on the day on which the President receives notification of their appointment.
- (3) Members may take part in all deliberations of the Council and may vote on behalf of their Contracting State.
- (4) Any Member prevented from attending a meeting may arrange to be represented by another member of his/her delegation (Article 2, paragraph 2). The Council Secretariat (Article 6) shall be informed thereof in writing.

Article 2

Delegations

- (1) Unless the Council decides otherwise in a particular case, Members may be assisted by advisers or experts (Article 26, paragraph 2, of the European Patent Convention). The Council Secretariat (Article 6) shall be informed of their names in writing.
- (2) The delegation of each Contracting State shall be composed of its Members together with their advisers and experts.

Article 3

States with right of accession

Representatives of States which have the right to accede to the European Patent Convention in accordance with Article 166, paragraph 1, of that Convention may, until their ratification or accession takes effect, take part in those deliberations of the Council which do not relate to confidential agenda items (Article 9, paragraph 3).

Article 4

Chair

- (1) The Chairperson of the Administrative Council (hereinafter referred to as the "Chairperson") elected in accordance with Article 27, paragraph 1, of the European Patent Convention shall be responsible for the work of the Council and the exercise of its functions. In the exercise of this duty the Chairperson shall closely co-operate with the President of the European Patent Office. All the provisions of the present Rules of Procedure concerning the Chairperson shall

apply *mutatis mutandis* to the Deputy Chairperson and to the ad hoc Chairperson referred to in paragraph 4 of the present article.

- (2) The Chairperson shall preside over the meetings of the Council. At any time during the discussion, Members may raise objections to the Chairperson's conduct of business. If the Chairperson does not uphold the objection, any Member may call for an immediate decision by the Council.
- (3) If the office of Chairperson or Deputy Chairperson of the Council falls vacant, the Council shall at its next meeting elect a new Chairperson or Deputy Chairperson, in accordance with Article 27 of the European Patent Convention.
- (4) In the event of neither the Chairperson nor the Deputy Chairperson being able to attend a meeting of the Council, the meeting shall be opened by the longest serving Member, who shall immediately invite the Council to elect an ad hoc Chairperson. The ad hoc Chairperson shall then preside over the meeting while the Chairperson and Deputy Chairperson are absent.

Article 5

Board

- (1) A Board may be set up in accordance with Article 28 of the European Patent Convention.
- (2) Without prejudice to the responsibilities of the Budget and Finance Committee, the duties of the Board shall be to assist the Chairperson in preparing the work of the Council.
- (3) Further details of the Board's function and working arrangements shall be laid down by the Council in its decision setting up the Board and in related subsequent decisions. This/these may in particular include further duties entrusted by the Council to the Board.

Article 6

Council Secretariat

- (1) Pursuant to Article 32 of the European Patent Convention, the President of the European Patent Office shall place a secretariat (hereinafter referred to as the "Council Secretariat") at the disposal of the Council.
- (2) The Council Secretariat shall draft the Minutes (Article 12), be responsible for all organisational aspects of the proceedings of the Council and advise the Chairperson on organisational matters.

Article 7

Other participants

President of the European Patent Office

- (1) The President of the European Patent Office shall take part in all the deliberations of the Council (Article 29, paragraph 2, of the European Patent Convention). Unless the Council decides otherwise in a particular case, he/she may be assisted by other employees of the European Patent Office.

Observers

- (2) Unless the Council decides otherwise in a particular case, observers (Article 30 of the European Patent Convention) may take part in those deliberations of the Council which do not relate to confidential agenda items (Article 9, paragraph 3).

Board of Auditors

- (3) The Board of Auditors may take part in all the deliberations of the Council (Article 77, paragraph 4, of the Financial Regulations of the European Patent Organisation).

Staff representatives

- (4.1) Unless the Council decides otherwise in a particular case, and subject to subparagraph (2), up to four staff representatives may take part in those deliberations of the Council which do not relate to confidential agenda items (Article 9, paragraph 3).
- (4.2) Administrative approval for their participation shall be at the discretion of the President of the European Patent Office.

Part 2: Procedure

Article 8

Convocation

- (1) The Council shall define its work programme and schedule its ordinary meetings for each calendar year in advance.
- (2) The Chairperson shall give notice of convocation of the Council at least fourteen calendar days before the beginning of the meeting.

- (3) Meetings of the Council shall normally be held at the European Patent Office in Munich.

Article 9

Agenda

I. Provisional agenda

- (1) The Chairperson shall draw up the provisional agenda for each meeting and indicate the provisional order in which the agenda items are to be discussed. This information shall be circulated at least fourteen calendar days before the beginning of the meeting.

(2) Requests for inclusion of items/submission of documents

- (2.1) Subject to the limitations set out in this paragraph, the Chairperson shall include in the provisional agenda the items in respect of which a request for inclusion has been received at least sixteen calendar days before the beginning of the meeting from a Member, from the Chairperson of any Committee, Working Party or other subsidiary body established by the Council, from the Board of Auditors (Article 7, paragraph 3), from the Council Secretariat or from the President of the European Patent Office, and for which the necessary documents have been submitted.

The Council Secretariat may only request to put items on the provisional agenda and submit documents when these relate to its responsibilities as set out in Article 6, paragraph 2.

- (2.2) Requests to have items put on the provisional agenda and documents from:
- (a) states with right of accession (Article 3) and observers (Article 7, paragraph 2) shall be submitted via the Chairperson or the President of the European Patent Office.
 - (b) the staff representatives (Article 7, paragraph 4) shall be submitted via the President of the European Patent Office.

- (2.3) Requests to have items put on the provisional agenda and documents received:
- (a) up to eight calendar days before the meeting begins shall be transmitted to Members and other participants without delay.
 - (b) after that date shall also be transmitted, but such items and documents shall be put on the provisional agenda for the following Council meeting or dealt with by written procedure (Article 10, paragraphs 4 to 9) unless the Council proceeds under paragraph 9 of the present article.
- (3) The Chairperson shall allocate each item on the provisional agenda to Category A, B or C. Unless the Chairperson decides otherwise, category A shall be for items which the Budget and Finance Committee has already approved by a three quarters' majority and which the Council can adopt without discussion. Category B shall be for items requiring discussion by the Council. Category C shall be for confidential items which the Council discusses and adopts in closed session comprising the Members, the President and the assisting employees of the European Patent Office (Article 7, paragraph 1), and the Board of Auditors (Article 7, paragraph 3).

The Chairperson may change the category of individual items on the provisional agenda at any time prior to the beginning of the meeting.

- (4) Each item on the provisional agenda shall also be accompanied by one of the abbreviations below to indicate the purpose for which a document is being submitted:

inf = for information

opn = for opinion

dec = for decision

II. Final agenda

- (5) At the beginning of each meeting, the Chairperson shall, where necessary, supply Members with a list of requests and documents received up to eight calendar days before the start of the meeting. Inclusion of such requests and documents in the final agenda shall be subject to the approval of the Council by a three-quarters' majority.
- (6) Any Member or the President of the European Patent Office may request that an item be transferred from Category A to Category B.

- (7) The Council shall adopt the agenda and the order in which the agenda items are to be discussed at the beginning of each meeting.
- (8) After decisions on A items not requiring discussion have been taken, Members, representatives of observers (Article 30 of the European Patent Convention), the Board of Auditors, the chairpersons of subsidiary bodies, and the President of the European Patent Office may make a statement for inclusion in the minutes.
- (9) With the unanimous agreement of the Council, at any time prior to the end of the meeting
 - (a) questions and documents that are urgent or in the special interest of the Organisation may be added to the agenda

and
 - (b) items on the agenda may be deleted, carried over to a subsequent meeting, amended or reassigned to a different category (paragraph (3) of the present article) or position in the order for discussion.

Article 10

Voting

I. Voting at meetings

- (1) Voting shall be by a show of hands, unless any Member requests either a secret ballot or a roll call before voting has commenced. Subject to Article 35, second paragraph, of the European Patent Convention and divergent provisions in these Rules of Procedure, the Council shall take its decisions by a simple majority of the Contracting States represented and voting.
- (2) Immediately after a first vote by a show of hands, the result of which shall be ascertained and made known by the Chairperson, any Member may demand a second vote by roll call, which shall then replace the first.
- (3) In the event of a vote by roll call, the Chairperson shall call the roll of the delegations in the alphabetical order of the names of the Contracting States in their respective languages, beginning with the delegation of the Contracting State whose name he/she has drawn by lot.

II. Written procedure

- (4) By derogation from paragraphs 1 to 3, on a proposal from either the Chairperson or the President of the European Patent Office the Council may take a vote by written procedure in accordance with the following provisions.
- (5) If a vote is to be taken by written procedure, the Chairperson shall communicate the wording of the proposal at issue to all Members and to the President of the European Patent Office. At the same time the Chairperson shall invite Members to inform him/her, within fourteen calendar days,
 - (a) whether they agree to use the written procedure
and
 - (b) whether they approve the proposal.
- (6) A proposal submitted for voting by written procedure may not be amended; it shall be approved or rejected in its entirety.
- (7) The proposal shall be deemed to be adopted if
 - (a) three quarters of the Contracting States have agreed to the use of the written procedure
and
 - (b) the Contracting States have approved the Chairperson's proposal by whichever majority is required under Articles 34 to 36 of the European Patent Convention.
- (8) If a proposal submitted for voting by written procedure fails to achieve the majorities required in accordance with the above provisions, it shall be included in the provisional agenda of the Council's next meeting.
- (9) The Chairperson shall maintain a list of decisions taken by written procedure. At the beginning of each meeting of the Council, the Chairperson shall inform the participants of any decisions taken by written procedure since its last meeting.

Article 11

Interpreting

Interpreting from each of the languages English, French and German into each of the other two languages shall be provided throughout each meeting of the Council, unless the Council unanimously decides to dispense therewith.

Article 12

Minutes

- (1) A summary of the decisions taken at each meeting of the Council shall be forwarded to Members no later than fourteen calendar days after the end of the meeting.
- (2) The draft minutes shall be approved at the following meeting of the Council, and the original copy of the minutes, as approved, shall be signed by the Chairperson. The signed copy of the minutes shall be kept in the archives of the Council Secretariat.
- (3) The final text of the minutes shall be forwarded to Members no later than 30 calendar days after its approval.

Article 13

Confidentiality

- (1) All persons taking part in meetings and receiving documents shall preserve the confidentiality of proceedings and votes relating to Category C items (Article 9, paragraph 3), of associated documents and of other documents marked confidential, regardless of the manner of their transmission.
- (2) Non confidential documents may be made available to third parties or to the public, unless the Council decides otherwise in a particular case.
- (3) Persons taking part in meetings shall, as such, have no right to inspect the files of, or to request any information concerning, European patent applications or patents, except insofar as they are available to the public.

Article 14

Committees, working parties and other subsidiary bodies

- (1) The Council may establish committees, working parties or other subsidiary bodies to advise it on particular questions.
- (2) Unless provided otherwise in this article, each subsidiary body shall establish its own procedure on a proposal from its chairperson.

- (3) The President of the European Patent Office shall have the right to attend, or be represented at, any meeting of a subsidiary body.
- (4) Documents submitted to a subsidiary body and reports on its deliberations shall be drawn up in English, French and German.
- (5) Articles 2 and 4, paragraph 4, and Articles 6, 7, 10, 11, 13, 16 and 17 shall apply, where possible, to subsidiary bodies *mutatis mutandis*.

Article 15

Specific tasks

The Council may request one or more of its Members or other delegation members (Article 2, paragraph 2) to undertake specific tasks and to make a report to the Council.

Part 3: Final provisions

Article 16

Travel expenses

- (1) The travel expenses incurred by two delegation members per Contracting State in travelling to and from Council functions or in undertaking specific tasks within the meaning of Article 15 shall be reimbursed by the European Patent Organisation at the same level as that payable to permanent employees of the European Patent Office in Group I (grades A7 and A6).
- (2) Their subsistence expenses shall likewise be reimbursed, in the form of a daily allowance at the same level as that payable to permanent employees of the European Patent Office in Group I (grades A7 and A6). The allowance shall be calculated at a flat daily rate.
- (3) In addition, the Chairperson shall be reimbursed on the same scale for such travel and accommodation expenses as he/she incurs in the performance of his/her duties.

Article 17

Communications

- (1) All correspondence with the Council shall be addressed to the Council Secretariat.
- (2) In the interests of rapid and efficient correspondence among Members and other participants, the Council shall whenever possible make use of generally available electronic communications facilities, especially electronic mail (e-mail) and the databases of the European Patent Office. The Council Secretariat shall maintain a list of all e-mail addresses and databases relevant to the work of the Council, and shall provide such information to Members and other participants.
- (3) Where notices of convocation, notifications, documents and other communications subject to deadlines have to be transmitted, the relevant deadline shall be deemed to be met if within the time limit any of the above is transmitted by e-mail or made available on one of the databases of the European Patent Office.
- (4) The Council Secretariat shall notify all Members by e-mail when such documents have been made available on one of the databases of the European Patent Office.
- (5) The Council Secretariat shall be responsible for ensuring access to such databases for delegations and subsidiary bodies of the Council.
- (6) Members, or members of their delegations, shall inform the Council Secretariat by e-mail of all documents not received relating to notified meetings, within three calendar days after the relevant deadline has expired.

Article 18

Specific provisions concerning the procedure for internal appeals against Council decisions [Title VIII (Appeals) of the Service Regulations for Permanent Employees of the European Patent Office]

- (1) The President of the European Patent Office shall draft an opinion for the Council.
- (2) The Council shall decide whether and by whom to be represented before its Appeals Committee. If the Council appoints the European Patent Office as its representative, the President of the European Patent Office shall take appropriate measures to ensure that such representation is provided.
- (3) If an appeal is partly or fully retracted or stayed, the Council shall inform its Appeals Committee without delay.

- (4) The President of the European Patent Office shall represent the European Patent Organisation (Article 5, paragraph 3, of the European Patent Convention) in any proceedings before the Administrative Tribunal of the International Labour Organization. He/she shall forward a copy of the written submissions and the judgment to the Council Secretariat.
- (5) Pursuant to Article 32 of the European Patent Convention, the President of the European Patent Office shall place a secretariat at the disposal of the Council's Appeals Committee.
- (6) Correspondence relating to proceedings before the Council's Appeals Committee is to be addressed to the Committee's Secretariat.

Article 19

Entry into force

These Rules shall enter into force on 1 January 2007.

Done at Munich, 7 December 2006"

Article 2

The procedure laid down by the Administrative Council at its 67th meeting (CA/112/97 - see CA/PV 67, point 36) and published as the "Procedure for internal appeals against decisions of the Administrative Council" in the Implementing Rules to the Service Regulations for permanent employees of the European Patent Office is hereby revoked.

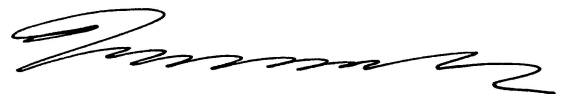
Article 3

This decision shall enter into force on 7 December 2006.

It shall apply with effect from 1 January 2007.

Done at Munich, 7 December 2006

For the Administrative Council
The Chairman



Roland GROSSENBACHER