

# Decision of the Administrative Council of 10 December 1998 amending the European Patent Convention and its Implementing Regulations

THE ADMINISTRATIVE COUNCIL OF THE EUROPEAN PATENT ORGANISATION,

Having regard to the European Patent Convention (EPC), and in particular Article 33, paragraph 1(a) and (b), thereof,

On a proposal from the President of the European Patent Office,

Having regard to the opinion of the Committee on Patent Law and of the Budget and Finance Committee,

HAS DECIDED AS FOLLOWS:

## **Article 1**

Article 109, paragraph 2, EPC shall be amended to read as follows:

"(2) If the appeal is not allowed within three months after receipt of the statement of grounds, it shall be remitted to the Board of Appeal without delay, and without comment as to its merit."

## **Article 2**

The Implementing Regulations to the EPC shall be amended as follows:

1. Rule 32, paragraph 2(c), shall be amended to read as follows:

"(c) The scale of the drawings and the distinctness of their graphical execution shall be such that reproduction, obtained electronically or photographically, with a linear reduction in size to two-thirds would enable all details to be distinguished without difficulty. If, as an exception, the scale is given on a drawing, it shall be represented graphically."

2. Rule 35, paragraph 3, shall be amended to read as follows:

"(3) The documents making up the European patent application shall be so presented as to admit of electronic as well as of direct reproduction, in particular by scanning, photography, electrostatic processes, photo offset and micro filming, in an unlimited number of copies. All sheets shall be free from cracks, creases and folds. Only one side of the sheet shall be used."

3. Rule 66, paragraph 2, first sentence, shall be amended to read as follows:

"(2) The decision shall be authenticated by the Chairman of the Board of Appeal and by the competent employee of the registry of the Board of Appeal, either by their signature or by any other appropriate means."

4. Rule 76, paragraph 3, shall be amended to read as follows:

"(3) The minutes shall be authenticated by the employee who drew them up and by the employee who conducted the oral proceedings or taking of evidence, either by their signature or by any other appropriate means."

5. Rule 78 shall be amended to read as follows:

"Rule 78

Notification by post

(1) Decisions incurring a time limit for appeal, summonses and other documents as decided on by the President of the European Patent Office shall be notified by registered letter with advice of delivery. All other notifications by post shall be by registered letter.

(2) Where notification is effected by registered letter, whether or not with advice of delivery, this shall be deemed to be delivered to the addressee on the tenth day following its posting, unless the letter has failed to reach the addressee or has reached him at a later date; in the event of any dispute, it shall be incumbent on the European Patent Office to establish that the letter has reached its destination or to establish the date on which the letter was delivered to the addressee, as the case may be.

(3) Notification by registered letter, whether or not with advice of delivery, shall be deemed to have been effected even if acceptance of the letter has been refused.

(4) To the extent that notification by post is not covered by paragraphs 1 to 3, the law of the State on the territory of which the notification is made shall apply."

6. Rule 95a shall be amended to read as follows:

"Rule 95a

Constitution, maintenance and preservation of files

(1) The European Patent Office shall constitute, maintain and preserve files relating to all European patent applications and patents.

(2) The President of the European Patent Office shall determine the form in which the files relating to European patent applications and patents shall be constituted, maintained and preserved.

(3) Documents incorporated in an electronic file shall be considered to be originals.

(4) Files relating to European patent applications and patents shall be preserved for at least five years from the end of the year in which:

(a) the application is refused or withdrawn or is deemed to be withdrawn;

(b) the patent is revoked pursuant to opposition proceedings; or

(c) the patent or the extended term or corresponding protection under Article 63, paragraph 2, lapses in the last of the designated States.

(5) Without prejudice to paragraph 4, files relating to European patent applications which have given rise to divisional applications under Article 76 or new applications under Article 61, paragraph 1(b), shall be preserved for at least the same period as the files relating to any one of these last applications. The same shall apply to files relating to any resulting European patents."

7. Rule 104, paragraph 1, shall be amended to read as follows:

"(1) When the European Patent Office acts as a receiving Office under the Cooperation Treaty, the international application shall be filed in English, French or German. It shall be filed in three copies; the same applies to any of the documents referred to in the check list provided for in Rule 3.3(a)(ii) of the Regulations under the Cooperation Treaty except the receipt for the fees paid or the cheque for the payment of fees. The President of the European Patent Office may, however, decide that the international application and any related item shall be filed in fewer than three copies."

### **Article 3**

The following new Rule 84a \* shall be added to Chapter IV of Part VII of the Implementing Regulations to the EPC:

"Rule 84a

Late receipt of documents

(1) A document received late at the European Patent Office shall be deemed to have been received in due time if it was posted, or delivered to a recognised delivery service, in due time before the expiry of the time limit in accordance with the conditions laid down by the President of the European Patent Office, unless the document was received later than three months after expiry of the time limit.

(2) Paragraph 1 shall apply mutatis mutandis to the time limits provided for in the Convention where transactions are carried out with the competent authority in accordance with Article 75, paragraph 1(b) or paragraph 2(b)."

### **Article 4**

This decision shall enter into force on **1 January 1999**.

Done at Munich, 10 December 1998.

For the Administrative Council

The Chairman

*Sean FITZPATRICK*

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\* See also decision of the President of the EPO dated 11 December 1998 concerning the application of Rule 84(a) EPC. OJ EPO 1999, 45 (in this issue).