

K oznámeniu č. 58/2004 Z. z.**IMPLEMENTING REGULATIONS
of 20 October 1977****as last amended by decision of the Administrative Council of the European Patent Organisation
of 13 December 2001****Rule 10****Presidium of the Boards of Appeal**

(1) The autonomous authority within the organisational unit comprising the Boards of Appeal (the "Presidium of the Boards of Appeal") shall consist of the Vice-President in charge of the Boards of Appeal, who shall act as chairman, and twelve members of the Boards of Appeal, six being Chairmen and six being other members.

(2) All members of the Presidium shall be elected by the Chairmen and members of the Boards of Appeal for one working year. If the full composition of the Presidium cannot be reached, the vacancies shall be filled by designating the most senior Chairmen and members.

(3) The Presidium shall adopt the Rules of Procedure of the Boards of Appeal and the Rules of Procedure for the election and designation of its members. The Presidium shall further advise the Vice-President in charge of the Boards of Appeal with regard to matters concerning the functioning of the Boards of Appeal in general.

(4) Before the beginning of each working year the Presidium, extended to include all Chairmen, shall allocate duties to the Boards of Appeal. In the same composition, it shall decide on conflicts regarding the allocation of duties between two or more Boards of Appeal. The extended Presidium shall designate the regular and alternate members of the various Boards of Appeal. Any member of a Board of Appeal may be designated as a member of more than one Board of Appeal. These measures may, where necessary, be amended during the course of the working year in question.

(5) The Presidium may only take a decision if at least five of its members are present; these must include the Vice-President in charge of the Boards of Appeal or his deputy, and the Chairmen of two Boards of Appeal. Where the tasks mentioned in paragraph 4 are concerned, nine members must be present, including the Vice-President in charge of the Boards of Appeal or his deputy, and the Chairmen of three Boards of Appeal. Decisions shall be taken by a majority vote; in the event of parity of votes, the Chairman or his deputy shall have the casting vote. Abstentions shall not be considered as votes.

(6) The Administrative Council may allocate duties under Article 134, paragraph 8(c), to the Boards of Appeal.

Rule 11**Business distribution scheme for the Enlarged Board of Appeal and adoption of its Rules of Procedure**

(1) Before the beginning of each working year, the members of the Enlarged Board of Appeal who have not been appointed under Article 160, paragraph 2, shall designate the regular and alternate members of the Enlarged Board of Appeal.

(2) The members of the Enlarged Board of Appeal who have not been appointed under Article 160, paragraph 2, shall adopt the Rules of Procedure of the Enlarged Board of Appeal.

(3) Decisions on matters mentioned in paragraphs 1 and 2 may only be taken if at least five members are present, including the Chairman of the Enlarged Board of Appeal or his deputy; in the event of parity of votes, the Chairman or his deputy shall have the casting vote. Abstentions shall not be considered as votes.

Rule 25**Provisions for European divisional applications**

(1) The applicant may file a divisional application relating to any pending earlier European patent application.

(2) The filing fee and search fee shall be payable in respect of a European divisional application within one month after the filing thereof. The designation fees shall be payable within six months of the date on which the European Patent Bulletin mentions the publication of the European search report drawn up in respect of the European divisional application.

Rule 36**Documents filed subsequently**

(1) Rules 27, 29 and 32 to 35 shall apply to documents replacing documents making up the European patent application. Rule 35, paragraphs 2 to 14, shall

also apply to the translation of the claims referred to in Rule 51.

(2) All documents other than those referred to in the first sentence of paragraph 1 shall normally be type-written or printed. There must be a margin of about 2.5 cm on the left-hand side of each page.

(3) All documents, with the exception of annexed documents, filed after filing of the European patent application must be signed. If a document has not been signed, the European Patent Office shall invite the party concerned to do so within a time limit to be laid down by that Office. If signed in due time, the document shall retain its original date of receipt; otherwise it shall be deemed not to have been received.

(4) Such documents as must be communicated to other persons or as relate to two or more European patent applications or European patents, must be filed in a sufficient number of copies. If the party concerned does not comply with this obligation in spite of a request by the European Patent Office, the missing copies shall be provided at the expense of the party concerned.

(5) Notwithstanding paragraphs 2 to 4 the President of the European Patent Office may permit documents filed after filing of the European patent application to be transmitted to the European Patent Office by other means of communication and lay down conditions governing their use. He may, in particular, require that within a period laid down by him written confirmation be supplied reproducing the contents of documents so filed and complying with the requirements of these Implementing Regulations; if such confirmation is not supplied in due time, the documents shall be deemed not to have been received.

Rule 38

Declaration of priority and priority documents

(1) The declaration of priority referred to in Article 88, paragraph 1, shall state the date of the previous filing and the State in or for which it was made and shall indicate the file number.

(2) The date and State of the previous filing must be stated on filing the European patent application; the file number shall be indicated before the end of the sixteenth month after the date of priority.

(3) The copy of the previous application must be filed before the end of the sixteenth month after the date of priority. The copy must be certified as an exact copy of the previous application by the authority which received the previous application and must be accompanied by a certificate issued by that authority stating the date of filing of the previous application.

(4) The copy of the previous application shall be deemed duly filed if a copy of that application available to the European Patent Office is to be included in the file of the European patent application under the conditions laid down by the President of the European Patent Office.

(5) The translation of the previous application re-

quired under Article 88, paragraph 1, must be filed within a time limit to be set by the European Patent Office, but at the latest within the time limit under Rule 51, paragraph 4. Alternatively, a declaration may be submitted that the European patent application is a complete translation of the previous application. Paragraph 4 shall apply *mutatis mutandis*.

(6) The particulars stated in the declaration of priority shall appear in the published European patent application and also on the European patent specification.

Rule 51

Examination procedure

(1) In the communication under Article 96, paragraph 1, the European Patent Office shall give the applicant an opportunity to comment on the European search report and to amend, where appropriate, the description, claims and drawings.

(2) In any communication under Article 96, paragraph 2, the Examining Division shall, where appropriate, invite the applicant to correct the deficiencies noted and to amend the description, claims and drawings.

(3) Any communication under Article 96, paragraph 2, shall contain a reasoned statement covering, where appropriate, all the grounds against the grant of the European patent.

(4) Before the Examining Division decides to grant the European patent, it shall inform the applicant of the text in which it intends to grant it, and shall invite him to pay the fees for grant and printing and to file a translation of the claims in the two official languages of the European Patent Office other than the language of the proceedings within a period to be specified, which may not be less than two months or more than four months. The period shall be extended once by a maximum of two months provided the applicant so requests before it expires. If the applicant pays the fees and files the translation within this period, he shall be deemed to have approved the text intended for grant.

(5) If the applicant, within the period laid down in paragraph 4, requests amendments under Rule 86, paragraph 3, or the correction of errors under Rule 88, he shall, where the claims are amended or corrected, file a translation of the claims as amended or corrected. If the applicant pays the fees and files the translation within this period, he shall be deemed to have approved the grant of the patent as amended or corrected.

(6) If the Examining Division does not consent to an amendment or correction requested under paragraph 5, it shall, before taking a decision, give the applicant an opportunity to submit, within a period to be specified, his observations and any amendments considered necessary by the Examining Division, and, where the claims are amended, a translation of the claims as amended. If the applicant submits such amendments, he shall be deemed to have approved the grant of the patent as amended. If the European patent application

is refused, withdrawn or deemed to be withdrawn, the fees for grant and printing, and any claims fees paid under paragraph 7, shall be refunded.

(7) If the European patent application in the text intended for grant comprises more than ten claims, the Examining Division shall invite the applicant to pay claims fees in respect of each additional claim within the period laid down in paragraph 4 unless these fees have already been paid under Rule 31, paragraph 1.

(8) If the fees for grant and printing or the claims fees are not paid in due time or if the translation is not filed in due time, the European patent application shall be deemed to be withdrawn.

(8a) If the designation fees become due after the communication under paragraph 4 has been notified, the mention of the grant of the European patent shall not be published until the designation fees have been paid. The applicant shall be informed accordingly.

(9) If a renewal fee becomes due after the communication under paragraph 4 has been notified and before the next possible date for publication of the mention of the grant of the European patent, the mention shall not be published until the renewal fee has been paid. The applicant shall be informed accordingly.

(10) The communication under paragraph 4 shall indicate the designated Contracting States which require a translation pursuant to Article 65, paragraph 1.

(11) The decision to grant the European patent shall state which text of the European patent application forms the basis for the grant of the European patent.

Rule 85

Extension of time limits

(1) If a time limit expires on a day on which one of the filing offices of the European Patent Office in the sense of Article 75, paragraph 1(a) is not open for receipt of documents or on which, for reasons other than those referred to in paragraph 2, ordinary mail is not delivered there, the time limit shall extend until the first day thereafter on which all the filing offices are open for receipt of documents and on which ordinary mail is delivered.

(2) If a time limit expires on a day on which there is a general interruption or subsequent dislocation in the delivery of mail in a Contracting State or between a Contracting State and the European Patent Office, the time limit shall extend to the first day following the end of the period of interruption or dislocation for parties resident in the State concerned or who have appointed representatives with a place of business in that State. The first sentence shall apply mutatis mutandis to the period referred to in Article 77, paragraph 5. In the case where the State concerned is the State in which the European Patent Office is located, this provision shall apply to all parties. The duration of the above-mentioned period shall be as stated by the President of the European Patent Office.

(3) Paragraphs 1 and 2 shall apply mutatis mutandis to the time limits provided for in the Convention in the case of transactions carried out with the competent au-

thority in accordance with Article 75, paragraph 1(b) or paragraph 2(b).

(4) If an exceptional occurrence such as a natural disaster or strike interrupts or dislocates the proper functioning of the European Patent Office so that any communication from the Office to parties concerning the expiry of a time limit is delayed, acts to be completed within such a time limit may still be validly completed within one month after the notification of the delayed communication. The date of commencement and the end of any such interruption or dislocation shall be as stated by the President of the European Patent Office.

(5) Without prejudice to paragraphs 1 to 4, evidence may be offered that on any of the ten days preceding the day of expiration of a time limit the mail service was interrupted or subsequently dislocated on account of war, revolution, civil disorder, strike, natural calamity, or other like reason, in the locality where the party or his representative resides or has his place of business or is staying. If such circumstances are proven to the satisfaction of the European Patent Office, a document received late shall be deemed to have been received in due time provided that the mailing has been effected within five days after the mail service was resumed.

Rule 85a

Period of grace for payment of fees

(1) If the filing fee, the search fee or a designation fee has not been paid within the time limits provided for in Article 78, paragraph 2, Article 79, paragraph 2, Rule 15, paragraph 2, or Rule 25, paragraph 2, it may still be validly paid within a period of grace of one month from notification of a communication pointing out the failure to observe the time limit, provided that within this period a surcharge is paid.

(2) Designation fees in respect of which the applicant has dispensed with notification under paragraph 1 may still be validly paid within a period of grace of two months of expiry of the normal time limits referred to in paragraph 1, provided that within this period a surcharge is paid.

Rule 85b

Period of grace for the filing of the request for examination

If the request for examination has not been filed within the time limit provided for in Article 94, paragraph 2, it may still be validly filed within a period of grace of one month from notification of a communication pointing out the failure to observe the time limit, provided that within this period a surcharge is paid.

Rule 107

The European Patent Office as a designated or elected Office - Requirements for entry into the European phase

(1) In the case of an international application as re-

ferred to in Article 150, paragraph 3, the applicant must perform the following acts within a period of thirty-one months from the date of filing of the application or, if priority has been claimed, from the priority date:

- (a) supply, where applicable, the translation of the international application required under Article 158, paragraph 2;
- (b) specify the application documents, as originally filed or in amended form, on which the European grant procedure is to be based;
- (c) pay the national basic fee provided for in Rule 106(a);
- (d) pay the designation fees if the time limit specified in Article 79, paragraph 2, has expired earlier;
- (e) pay the search fee provided for in Article 157, paragraph 2(b), where a supplementary European search report has to be drawn up;
- (f) file the request for examination provided for in Article 94, if the time limit specified in Article 94, paragraph 2, has expired earlier;
- (g) pay the renewal fee in respect of the third year provided for in Article 86, paragraph 1, if the fee has fallen due earlier under Rule 37, paragraph 1;
- (h) file, where applicable, the certificate of exhibition referred to in Article 55, paragraph 2, and Rule 23.

(2) Where the European Patent Office has drawn up an international preliminary examination report the examination fee shall be reduced as laid down in the Rules relating to Fees. If the report was established on

certain parts of the international application in accordance with Article 34, paragraph 3(c), of the Cooperation Treaty, the reduction shall be allowed only if examination is to be performed on the subject-matter covered by the report.

Rule 108

Consequences of non-fulfilment of certain requirements

(1) If either the translation of the international application or the request for examination is not filed in due time, or if the national basic fee or the search fee is not paid in due time, or if no designation fee is paid in due time, the European patent application shall be deemed to be withdrawn.

(2) The designation of any Contracting State in respect of which the designation fee has not been paid in due time shall be deemed to be withdrawn.

(3) If the European Patent Office notes that the application or the designation of a Contracting State is deemed to be withdrawn under paragraph 1 or 2, it shall communicate this to the applicant. Rule 69, paragraph 2, shall apply *mutatis mutandis*. The loss of rights shall be deemed not to have occurred if, within two months of notification of the communication under sentence 1, the omitted act is completed and a surcharge is paid.