

BR/GT I/3 e/69

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INTER-GOVERNEMENTAL CONFERENCE Brussels, 30 June 1969
FOR THE SETTING UP OF A EUROPEAN BR/GT I/3/69
SYSTEM FOR THE GRANT OF PATENTS

- Secretariat -

COVERING LETTER

The French Delegation sent to the Conference Secretariat, under cover of a letter dated 26 June 1969, its proposals regarding the wording of Part 1 and Part 2, Chapters I to III, of the working draft presented by the Chairman of the Working Party (ref. BR/GT I/2/69).

These proposals are attached for the attention of the members of Working Party I of the Conference.

BR/GT I/3 e/69 mk

ANNEX

THE FRENCH DELEGATION'S PROPOSALS

The proposals below have been framed on the basis of Working Draft BR/GT I/2/69 presented by the Chairman of the Working Party. They relate only to Part 1 and Part 2, Chapters I to III, of the preliminary draft. To a certain extent the amendments proposed by the French Delegation are matters of form. This applies in particular to the fairly sweeping rearrangement of the provisions of Part 1 of the Convention.

Some of the wording proposed by the French delegation are followed by a commentary, while its position on certain of the Chairman's proposals is expressed in a note without a rewording being proposed.

Part 1

General Provisions

Article 1

(Purpose of the Convention)

(Articles 1 and 2 (1) in the Chairman's proposals)

- (1) This Convention hereby establishes a system of law concerning the grant of patents for inventions, common to the Contracting States.
- (2) Patents granted by virtue of this Convention shall be called "European patents".

Article 2

(Effect of the European patent)

(Article 2 (2a) in the Chairman's proposals)

The European patent shall, [subject to the provisions of this Convention,] be treated, in each of the States in respect of which it is granted, as a national patent granted by that State [as regards its term, content and the exercise of the rights attached thereto, assignments of which it may be the subject ...].

Note : the wording of the clause between [] depends on the subsequent provisions of the Convention and is given for guidance only. While it would not be in place to define fully the status of the European patent in each of the contracting states in this preliminary article, which is only a statement of principle, it does not seem enough to refer to "the effect" of the European patent as a way of showing that it is assimilated to the national patent in each of these States.

Article 3

(Territorial limitation)

(no corresponding proposal in document BR/GT I/2/69)

The applicant for a European patent may, on the conditions and subjects to the provisions prescribed by this Convention, request the granting of this patent for only some of the contracting States.

Article 4

(Special conventions)

(Article 8 a in the proposals)

The provisions of articles 2 and 3 above notwithstanding, any group of contracting States may provide by a special convention :

- a) that European patents may be applied for only in respect of all the States in the group ;
- b) that these patents shall have a unitary and autonomous character throughout the territories of the said States, and be subject to the provisions of the special convention.

Article 5

(European Patent Office)

- unchanged (Article 3 in the Chairman's proposals) -

Article 6

(Persons entitled to apply for a European patent)

(Article 5 in the Chairman's proposals)

Any natural or legal person, or any body equivalent to a legal person by virtue of the law governing it, possessing the nationality of one of the Contracting States or having his or its residence or registered place of business in one of the Contracting States may apply for a

European patent. An application for a European patent may also be made by natural or legal persons, or bodies equivalent to legal persons by virtue of the law governing them, possessing the nationality of a State other than one of the Contracting States, or having his or its residence or registered place of business in the said State, if nationals of the Contracting States enjoy in this State the benefits with respect to the protection of industrial property which it confers upon its own nationals. The provisions of the laws of non-contracting States relating to judicial and administrative procedure and to jurisdiction, and to the designation of an address for service or the appointment of an agent, which may be required by the laws on industrial property, shall not be taken into consideration in this respect.

Note : The first variant of article 5 figuring in document BR/GT I/2/69 was not discussed by the meeting held on 21 May 1969.

Article 7

(Coexistence of European and national patent laws)

- unchanged (Article 6 in the proposals) -

Article 8

(Simultaneous protection) (Article 7 in the proposals)

Note : The French delegation considers that if simultaneous protection were to be allowed in accordance with the proposed provision, the conditions and scope of such simultaneous protection should be defined clearly by this Convention (as they are in articles 194 et seq. of the preliminary draft of 1962) in order to obviate uncertainties or divergences prejudicial to the users of the European patent. Failing such common regulation it would be preferable to forbid simultaneous protection purely and simply.

Article 9

(Other international agreements)

- unchanged (Article 8 in the proposals) -

Part II

Patent law

Chapter I

Patentability

Article 10

(Patentable inventions)

- unchanged (Article 9 in the proposals) -

Article 11

(Exceptions to patentability)

- unchanged (Article 10 in the proposals)

Article 12

(Novelty)

(Article 11 in the proposals)

(1) - unchanged

(2) - unchanged

(3) - Note : The French law of 2 January 1968 provides that only the claims contained in the prior application for a patent can be advanced against the later application, without the prior application being considered as comprised in the state of the art.

- (4) - Note : It is still undecided whether the "prior rights" established by European patent applications will be examined by the European Patent Office or, subsequently, by the national bodies. The former solution would result in the granting, in respect of the same invention, of several European patents whose content would differ depending on the countries in question. The second solution would also have certain drawbacks. It seems that it would be preferable to prescribe general opposability for "prior European rights" without bringing in the restrictions contained in paragraph (4), which would therefore be deleted.

Articles 13, 14, 15

(Articles 12, 13 and 14 in the Chairman's proposals)

- unchanged -

Chapter II

Right to the patent

Article 16

(Right to obtain a European patent)

(Article 15 in the proposals)

Note : The French delegation wonders whether it would not be as well to restrict this provision to the subject of paragraph (2) therein and leave it purely and simply to national law to determine the principles contained in paragraph (1). Only paragraph (2) relates to proceedings before the European Patent Office.

Article 17

(Patent applications by persons not entitled to apply)

(Article 16 in the proposals)

Note : The reasons invoked with regard to the previous article would lead to the deletion of paragraphs (1) and (2) while retaining only what is contained in paragraph (3) and relates directly to proceedings before the European Office.

Article 18

(Right of the inventor to be mentioned as such)

- unchanged (Article 17 of the proposals)

Chapter III

Effects of the patent

Article 19

(Prior national rights - Article 19 in the proposals)

Note : It seems that the rule forming the subject of the note following this article should be expressly formulated in one of the later provisions of the Convention.

Article 20

(Rights conferred by a European patent - same article number as in the proposals)

- unchanged -

Article 20 bis (same article)

- (1) Note : The French delegation favours the second variant.
The word "unexamined" should be clarified.
- (2) Note : The French delegation proposes that only sub-paragraph a) be retained, to the exclusion of sub-paragraph b).
- (3) (unchanged).

Article 20 ter (same article)

- (1) Note : The French delegation favours the first variant.
The phrase "from the date of publication of the claims" could be clarified.
- (2) Note : The same remark applies as to the previous article : deletion of sub-paragraph b).
- (3) (unchanged).

Article 21

Note : In the second sentence it would be preferable to repeat the wording of the Strasbourg Convention : "Nevertheless, the description and drawings shall be used to interpret the claims".

Article 22

- unchanged -
