

# BR/GT I/6 e/69

## Travaux Préparatoires EPC 1973

### Comment:

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The documents produced before 1969 cannot be provided in English as this was not an official language in the period before that date. These documents therefore are provided in French and German.



INTER-GOVERNMENTAL CONFERENCE  
FOR THE ESTABLISHMENT OF A EUROPEAN  
SYSTEM FOR THE GRANT OF PATENTS

Luxembourg, 10 July 1969  
BR/GT I/5/69

                      
- Secretariat -

WORKING PARTY I

WORKING DOCUMENT

PRELIMINARY DRAFT

FOR A CONVENTION RELATING TO THE ESTABLISHMENT OF A  
EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

Articles 8a and 10 to 19

(Text drawn up by the Drafting Committee)

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Article 10

Exceptions to patentability

European patents shall not be granted in respect of

- (a) inventions the publication or exploitation of which would be contrary to "ordre public" or morality, provided that the exploitation shall not be deemed to be so contrary merely because it is prohibited by law or regulation in some or all of the Contracting States ;
- (b) plant or animal varieties or essentially biological processes for the production of plants or animals ; this provision does not apply to microbiological processes or the products thereof.

Article 11

Novelty

(1) An invention shall be considered to be new if it does not form part of the state of the art.

(2) The state of the art shall be held to comprise everything made available to the public by means of a written or oral description, by use, or in any other way, before the date of filing the application for a European patent.

(3) Additionally, the contents of earlier applications for European patents published on or after the date referred to in paragraph 2 shall be considered as comprised in the state of the art.

(4) Paragraph 3 shall be applied only when a Contracting State designated in respect of the later patent application was also designated in respect of the earlier patent application as published under article 85. (1)

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(1) It is agreed to examine later the consequences to be drawn from this paragraph as regards a possible division of the European patent application and/or the possibility of conversion to national applications, in respect of States designated in both applications.

Article 12

Non-prejudicial disclosures

A disclosure of the invention within the meaning of Article 11 shall not be taken into consideration if it occurred within six months preceding the filing of the application for a European patent and if it was due to, or in consequence of :

- (a) an evident abuse in relation to the applicant or his predecessor in title, or
- (b) the fact that the applicant or his predecessor in title has displayed the invention at official, or officially recognised, exhibitions falling within the terms of the Convention relating to international exhibitions signed at Paris on 22 November 1928 and revised on 10 May 1948.

Article 13

Inventive step

First variant

An invention shall be considered as involving an inventive step if it is not obvious having regard to the state of the art, excluding any documents within the meaning of Article 11, paragraph 3.

Second variant

An invention shall be considered as involving an inventive step if it is not obvious having regard to the state of the art. If the State of the art also includes documents within the meaning of Article 11, paragraph 3, each of these documents is to be considered separately<sup>7</sup>.

Article 14

Industrial application

An invention shall be considered as susceptible of industrial application if it can be made or used in any kind of industry, including agriculture.

CHAPTER II

RIGHT TO THE PATENT

Article 15

Right to the grant of a European patent

(1) The right to the grant of a European patent shall be determined by the national law governing the invention which is the subject of the European patent application.

(2) For the purposes of proceedings before the European Patent Office, the person making the patent application shall be deemed to be entitled to exercise the right referred to in paragraph 1.

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(1) It will be examined later whether the relevant national law should be defined in a clearer way.

Article 16

Patent applications by persons not entitled to apply

(1) - deleted -

(2) - deleted -

(3) If a final decision has been given which recognises that some person other than the applicant is entitled to the patent, that person may, provided that the European patent has not yet been granted, file a new application in respect of the same invention within a period of three months following the final decision. In so far as the subject matter of the new application does not go beyond the description given in the original application, the new patent application shall be deemed to have been filed on the date of the earlier application and shall enjoy the right of priority where applicable. The original application for a European patent shall be deemed to have been withdrawn once the new application has been filed.

(4) The provisions of paragraph 3 shall not affect the application of national law to the European patent after grant.

Article 17

Right of the inventor to be mentioned as such

The inventor shall have the right, vis-à-vis the applicant for a European patent, to be mentioned as such before the European Patent Office.

CHAPTER III

EFFECTS OF THE PATENT

Article 18

Territorial scope of a European patent

- deleted ; see Article 2, paragraph 2a -

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Article 19

- deleted -

Note

The existence of a prior national right is to be a ground, in the Contracting State in question, for the revocation of a European patent.

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