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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, 11 July 1969

BR/GT I/7/69

- 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 20 to 24

(Texte drawn up by the Drafting Committee)

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Article 20

(originally the 2nd variant of article 20)

Rights conferred by a European patent

(1) A European patent shall confer on its proprietor, from the date of publication of its grant, in each Contracting State in respect of which it is granted, the same rights as would be conferred by a national patent granted in that State. Any infringement of the rights of the proprietor of a European patent shall be dealt with under the laws of that State.

(2) - deleted -

(3) - deleted ; see Articles 20bis and 20ter concerning protection resulting from a European patent application -

Article 20^{bis}

Rights conferred by a European patent application after publication

(1) A European patent application shall, from the date of its publication under Article (85), provisionally confer upon the applicant such protection as is conferred by Article 20.

(2) Any Contracting State may stipulate, in respect of its own territory, that a European patent application shall not confer such protection as is conferred by Article 20. In this event, such State shall ensure at least that, from the date of publication of a European patent application, the applicant can claim appropriate compensation from any person using the subject matter of the application in the said State in circumstances where that person would be liable under national law for infringement of a national patent.

(3) Article 21, paragraph 2, shall apply to the provisions of paragraphs 1 and 2.

(4) Any Contracting State which does not have as an official language any of the languages specified in Article 34, paragraph 1, may stipulate that provisional protection in accordance with paragraphs 1 and 2 above shall not be effective until such time as either a translation of the patent claims has been made available to the public in the manner prescribed by national law in one of its official languages

or a translation of the patent claims into one of its official languages has been communicated to any person using the subject matter of the application in the said State.

Article 20^{bis} (cont.)

(5) Once the refusal of a European patent application or of a European patent has become final, or once a European patent application has been withdrawn, the European patent application shall be deemed never to have had the effects set out in paragraphs 1 and 2 above. Where the designation of a Contracting State is withdrawn, the same shall apply in respect of the effects of the European patent application in that State.

Article 20^{ter}

Rights conferred by a European patent application after publication
of the claims

(1) A European patent application shall, from the date of publication under Article (...) of the patent claims, provisionally confer such protection as is conferred by Article 20. The provisions of Article 21, paragraph 2 shall apply.

(2) The provisions of Article 20^{bis}, paragraphs 4 and 5 shall apply.

Article 21

Extent of the protection conferred by a European patent

(1) The extent of the protection conferred by a European patent shall be determined by the terms of the claims. Nevertheless, the description and drawings shall be used to interpret the claims.

(2) The grant of a European patent shall determine retroactively the extent of the protection conferred by the European patent application.

Article 22

Right of personal possession and right based on prior use

- deleted -

CHAPTER IV

TERM - PATENTS OF ADDITION

Article 23

Term of European patent

- deleted -

Note :

The Working Party feels that the spirit of the Convention leads to leaving the term of the European patent to be fixed by national law, but is of the opinion that if the participating States are prepared to accept a term of 20 years from the date of filing the application, a clause to that effect should be included in the Convention.

Article 24

European patents of addition

(1) European patents of addition shall be granted for inventions involving the improvement, development or supplementing of an invention protected by a European patent upon application being made subsequent to the application for such patent - hereinafter referred to as the parent patent - and prior to the date of publication of the application for the parent patent.

(1a) The improvement, development or supplementing must be such that it could have been claimed in the parent application without giving rise to objection on the ground of lack of unity of invention.

(2) A European patent of addition may be granted only to the proprietor of the parent patent. (1)

(2a) A patent of addition shall not be granted in respect of Contracting States other than those for which a parent patent was granted.

(3) The invention which forms the subject of the patent of addition shall not be subject to the requirement of an inventive step within the meaning of Article 15, in relation to the contents of the specification relating to the parent patent.

(3a) In those Contracting States for which it has been granted and whose law permits the granting of patents of addition, the European patent of addition shall have the effect of a national patent of addition. In the other Contracting States for which it has been granted it shall have the effect of an independent patent.

(4) This paragraph will be re-examined in the light of the possibility of the parent patent having been assigned to different owners in different countries.

Article 24 (cont.)

(4) - deleted -

(5) The applicant for a European patent of addition may, until such time as the communication referred to in Article 101, paragraph 1, is made, convert the application for a patent of addition into an independent application.(1).

(1) The time-limit for conversion is to be reviewed in the light of the need for re-examination for inventive step.