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Comment:

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

Brussels, 1 September 1969
BR/GT I/11/69

- Secretariat -

W o r k i n g d o c u m e n t

for a Draft Convention for a European System for the Grant of Patents

put forward by the Chairman of Working Party I

Articles 113a to 113g

Introductory Note

The present working document contains the proposals for Article group 113a et seq., referred to on page 3 of working document BR/GT I/10/69 of 12 August 1969. The intention of this group of Articles is to ensure, on the one hand, that a European patent application can be filed via an international application pursuant to the Patent Co-operation Treaty (PCT) and, on the other hand, that a European patent application can serve as a basis for an international application.

CHAPTER III^{bis}
INTERNATIONAL APPLICATION PURSUANT TO
THE PATENT CO-OPERATION TREATY

Article 113a
Application of the Patent Co-operation Treaty

Chairman's proposal

(1) The Patent Co-operation Treaty of ..., hereinafter referred to as "the Co-operation Treaty", shall be applied in accordance with the provisions of this Chapter.

(2) In proceedings before the European Patent Office in respect of international applications pursuant to the Co-operation Treaty, the provisions of that Treaty shall be applied, supplemented by the provisions of this Convention.

(3) Where reference is made in this Convention to the Co-operation Treaty, such reference shall include the Regulations under the Patent Co-operation Treaty.

Article 113b

Functions of the European Patent Office in the
context of the Patent Co-operation Treaty

Chairman's proposal

(1) Subject to the provisions set out below, the European Patent Office shall act as a receiving Office and as a designated Office within the meaning of Chapter I of the Co-operation Treaty, once that Chapter has entered into force for at least one Contracting State to this Convention.

(2) Subject to the provisions set out below, the European Patent Office shall act as an International Preliminary Examining Authority within the meaning of Chapter II of the Co-operation Treaty, once that Chapter has entered into force for at least one Contracting State to this Convention, and all other conditions laid down by the Co-operation Treaty and by this Convention for the performance of the functions of an International Preliminary Examining Authority have been met.

(3) Subject to the provisions set out below, the European Patent Office shall act as an elected Office within the meaning of Chapter II of the Co-operation Treaty, once that Chapter has entered into force for at least one Contracting State to this Convention, and if the applicant has chosen the European Patent Office as a designated Office and as an elected Office.

Note :

The Chairman has assumed that the decision as to whether the European Patent Office is to be an International Preliminary Examining Authority would lie with the Administrative Council, and that a corresponding provision would be incorporated in the regulations concerning the competence of the Administrative Council.

The European Patent Office as a receiving Office

Chairman's proposal

(1) The European Patent Office may act as a receiving Office within the meaning of Article 2(iv) of the Co-operation Treaty if the applicant is a national of a Contracting State to this Convention, in respect of which the Co-operation Treaty has entered into force. The same shall apply if the applicant has his registered place of business or his residence in such State.

(2) The European Patent Office may also act as a receiving Office if the applicant is a national of a State which is not a Contracting State to this Convention, but which is a Contracting State to the Co-operation Treaty and which has concluded an agreement with the Administrative Council whereby the European Patent Office acts as a receiving Office, in accordance with the provisions of the Co-operation Treaty, in place of the national Office of that State. The same shall apply if the applicant has his registered place of business or his residence in such State.

(3) Subject to the prior approval of the Administrative Council, the European Patent Office may also act as a receiving Office, if the applicant is a national of a State in respect of which the Assembly of the International Patent Co-operation Union has appointed the European Patent Office as a competent receiving Office. The same shall apply if the applicant has his registered place of business or his residence in such State.

Note :

The Co-operation Treaty is what is termed a "closed Convention". Paragraph 1 of the proposal corresponds to the principle laid down in Rule 19.1(a). Paragraph 2 corresponds to the exception provided for in Rule 19.1(b) and Paragraph 3 to that in Rule 19.1(c).

Article 113d

Filing and transmittal of the application

Chairman's proposal

(1)

1st variant

Article 66 shall apply, mutatis mutandis, to the filing of international applications.

2nd variant

International applications shall be filed directly with the European Patent Office. Article 66, paragraph 2, shall apply mutatis mutandis.

Note :

The 2nd variant for paragraph 1 would exclude the possibility of filing a European patent application in accordance with Article 66, paragraph 1(b), in order to allow the otherwise short period permitted for transmitting the documents to the International Bureau to be respected. It is pointed out that the European Patent Office, as the receiving Office, must transmit the international application to the International Bureau not later than 5 days prior to the expiration of the time limit of 13 months (cf. Rule 22.1(a)). The time available for transmission would then be only 25 days in the event of the applicant having claimed a priority and of the one-year priority period having fully elapsed.

(2) In the event of an international application being filed with the European Patent Office through the intermediary of the competent national central industrial property office, the Contracting State concerned shall take all necessary measures to ensure that the application is transmitted to the European Patent Office in time for the latter to be able to comply in due time with the conditions for transmittal under the Co-operation Treaty.

Article 113e

The European Patent Office as a designated Office

Chairman's proposal

(1) The European Patent Office shall act as a designated Office within the meaning of Article 2(ii) of the Co-operation Treaty if the applicant indicates /to the receiving Office or the International Bureau/, within the period laid down in Article ... of the Co-operation Treaty, for which of the Contracting States to this Convention designated by him the European Patent Office is to be the designated Office.

(2) In so far as any group of Contracting States has made use of the authorisation under Article 8a, such group may prescribe that the European Patent Office shall be the designated Office only if all the States in that group have been designated in the international application and the applicant has indicated that the European Patent Office is to be the designated Office for all these States.

(3) In respect of the form and content of international applications filed with the European Patent Office, the provisions of this Convention shall be deemed to have been met in so far as those of the Co-operation Treaty have been met.

(4) The fee provided for in Article 68a, paragraph 2, shall not be payable for international applications.

Note :

In paragraph 1, the Chairman has assumed that the European Patent Office can only be a designated Office for Contracting States to this Convention which are also Contracting States to the Co-operation Treaty.

In the event of the European Patent Office being named as a designated Office within the meaning of the Co-operation Treaty, proceedings for grant shall be suspended until the end of the period laid down in Article 23 of the Co-operation Treaty. In the Chairman's opinion, the provisions of Article 23 of the Co-operation Treaty are directly applicable by means of Article 113a of the present proposals, so that any express reference to the said Article 23 would be superfluous.

The Chairman would point out that proceedings for grant before the European Patent Office would also be suspended if only one of the States designated by the applicant were a Contracting State to the Co-operation Treaty, since proceedings before the European Patent Office may only be carried out as a whole.

Article 113f

International Search Report

Chairman's proposal

The International Search Report under Article 18 of the Co-operation Treaty shall take the place of the report on the state of the art under Article 78, paragraph 1. However, the European Patent Office may obtain a supplementary report on the state of the art from the International Patent Institute at The Hague, in accordance with Article 9⁴, paragraph 3, and Article 110, paragraph 3.

Article 113g

Publication of the international application

Chairman's proposal

(1) An international application published by the International Bureau pursuant to Article 21 of the Co-operation Treaty shall, subject to the provisions set out below, confer upon the applicant the provisional protection granted pursuant to Article 20bis.

(2) If the international application is published by the International Bureau in one of the languages specified in Article 34, paragraph 1, the provisional protection referred to in paragraph 1 above shall commence on the day of publication of the translation of the claims into both of the other languages specified in Article 34, paragraph 1.

(3) If the international application is not published by the International Bureau in one of the languages specified in Article 34, paragraph 1, the provisional protection referred to in paragraph 1 above shall commence on the day of publication of the translation of the application into one of the languages specified in Article 34, paragraph 1, and of the translation of the claims into both of the other languages.

(4) Publication of the international application by the International Bureau, together with the publication of the translation of the claims pursuant to paragraph 2 or of the translations pursuant to paragraph 3, shall take the place of the publication of the European patent application pursuant to Article 86a.

Note :

The object of Article 113g is to supplement the authorisation contained in Article 29 of the Co-operation Treaty. The proposed provisions contain only the principles of the necessary regulations. Further details, such as whether it is the applicant or the European Patent Office who is to furnish the translations mentioned in paragraphs 2 and 3, or when and in what form such translations are to be published by the European Patent Office, are to be left to the Implementing Regulations.

The question of whether the files of international applications will be laid open to public inspection, without the approval of the applicant, from the moment of publication of the international application by BIRPI, or only from its publication by the European Patent Office pursuant to Article 113g, paragraph 4, is to be discussed in relation with Article 162, paragraph 2.