

# BR/GT I/15 e/69

## Travaux Préparatoires EPC 1973

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

Luxembourg, 16 October 1969  
BR/GT I/15/69

WORKING PARTY I

WORKING DOCUMENT

PRELIMINARY DRAFT

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

Articles 58a to 72

(Text drawn up by the Drafting Committee)

Article 58a (new)

Enlarged Board of Appeal

- (1) The Enlarged Board of Appeal shall be responsible for
- (a) deciding points of law referred to it by Boards of Appeal and
  - (b) giving opinions on points of law referred to it by the President of the European Patent Office.

Note :

The Drafting Committee will, after discussion of Article 112a by the Working Party, insert in that Article or in a new Article, two alternatives regarding references to the Enlarged Board of Appeal by the President.

- (2) The Enlarged Board of Appeal shall consist of seven members, of whom five shall be legally qualified members and two technically qualified members.

Article 58b (new)

Independence of the members of the Boards

(1) The members of the Enlarged Board of Appeal and of the Boards of Appeal shall be appointed for a term of five years and may not be removed from office during this term.

(2) The members of the Boards may not be members of the Examining Sections or Examining Divisions.

(3) In their decisions the members of the Boards shall not be bound by any instructions. They shall comply only with the provisions of this Convention and with those adopted in implementation thereof.

Article 59

Revocation Boards

- deleted; cf. Article 54, sub-paragraph (e)

CHAPTER IV

REGISTER - PUBLICATIONS - CLASSIFICATION

Article 60

Register of European Patents.

(1) The European Patent Office shall keep a register, to be known as the "Register of European Patents", which shall contain those particulars the registration of which is provided for by this Convention. No entry shall be made in the register prior to the date of publication under Article 86a.

(2) The Register of European Patents shall be open to public inspection. Extracts from its entries shall be delivered on request on payment of the fee prescribed by the Rules relating to fees adopted pursuant to this Convention.

Article 61

Publications of the European Patent Office

In addition to the publications referred to in Articles 86a and 103, the European Patent Office shall periodically publish :

- (a) A European Patent Bulletin containing entries made in the Register of European Patents, as well as all other particulars, the publication of which is prescribed by this Convention.
- (b) An Official Journal of the European Patent Office, containing notices and information of a general character issued by the President of the European Patent Office, as well as any other information relevant to this Convention or its implementation.

Article 62

Patent Classification in use by the European Patent Office

- deleted -

Note :

This Article is to be transferred to the Implementing Regulations.



CHAPTER V

RELATIONS WITH NATIONAL AUTHORITIES

Article 63

Exchange of publications

(1) The European Patent Office shall despatch free of charge to the central industrial property offices of the Contracting States, at their request and for their own use, one or more copies of the publications referred to in Articles 61, 86a and 103.

(2) The central industrial property offices of the Contracting States shall despatch free of charge to the European Patent Office, at the latter's request and for its own use, one or more copies of the published applications for and printed specifications of national patents, as well as of publications analogous to those of the European Patent Office referred to in Article 61 (a) and (b).

(3) The European Patent Office may conclude agreements relating to the exchange of publications with the central industrial property offices or other administrations of any State, or with international bodies.

Article 64

Requests for information

(1) Unless otherwise provided in this Convention or in national laws, the European Patent Office and the Courts or administrations of Contracting States shall give mutual assistance to each other by communicating information or opening files for inspection on request. For inspection of the files of the European Patent Office, the fee referred to in Article 162, paragraph 3, shall not be payable.

(2) The European Patent Office shall, on request, communicate the files concerning applications for European patents and those concerning European patents to the Courts or Public Prosecutor's Office of Contracting States, notwithstanding the restrictions laid down in Article 162.

(3) The European Patent Office and the central industrial property offices of Contracting States shall, on request, mutually inform each other about the progress of examination proceedings concerning applications for patents filed, as a whole or in part, in respect of the same invention, with the European Patent Office and with the said offices. Such information shall relate in particular, to the results of novelty searches, and to examiners' reports and decisions. These provisions shall also apply to action taken under Article 114.

ad Article 64

(4) The European Patent Office may communicate the information referred to in paragraph 3 to the industrial property offices of States not signatory to this Convention, where such mutual information is provided for by working agreements.

Article 65

Letters rogatory

Upon receipt of letters rogatory from the European Patent Office, the Courts of Contracting States shall undertake, on behalf of that Office, any necessary enquiries or other legal measures within the limits of their jurisdiction.

PART IV

APPLICATION FOR EUROPEAN PATENTS

CHAPTER I

FILING AND REQUIREMENTS OF THE APPLICATION

Article 66

Filing of the application

(1) An application for a European patent may be filed :

- (a) either at the European Patent Office ;
- (b) or, if the law of a Contracting State so permits, at the central industrial property office or other competent authority of that State. An application filed in this way shall have the same effect as if it had been filed at the same time at the European Patent Office.

(2) Any Contracting State may prescribe that a person having his registered place of business or his ordinary residence on its territory, with the exception of international bodies and organisations, the list of which shall be established by unanimous decision of the Administrative Council taking into account the general principles applicable in respect of such institutions and organisations, may not file an application for a European patent otherwise than as provided for in paragraph 1 (b).

ad Article 66

(3) In case of failure to observe any provisions made pursuant to paragraph 2 above, the European Patent Office shall transmit the application for a European patent to the central industrial property office of the Contracting State concerned. Such an application shall have the same effect as if it had been filed in the first place with the said central industrial property office. The provisions of Article 67 shall apply.

Article 67

Forwarding of applications for European patents

(1) The national central industrial property office shall be obliged to forward to the European Patent Office, in the shortest time compatible with the application of national law concerning the secrecy of inventions in the interests of the State, any applications for European patents which have been filed with that Office or with other competent authorities in that State.

(2) The Contracting States shall take all appropriate steps to ensure that applications for European patents, the subject of which is obviously not liable to secrecy by virtue of the law referred to in paragraph 1, shall be forwarded to the European Patent Office within a period not exceeding [six weeks] from the date of filing. Applications for European patents which require further examination as to their liability to secrecy shall be forwarded in such manner as to reach the European Patent Office within the period specified in paragraph 2a.

[(2a) The period referred to in the second sentence of paragraph 2 shall be :

- (a) four months as from the date of filing, for an application for a European patent for which priority has not been claimed, and
- (b) fourteen months as from the date of priority, for an application for a European patent for which priority has been claimed.]

ad Article 67

(3) An application for a European patent, the subject of which has been made secret, shall not be forwarded to the European Patent Office.

⌈(4) Applications for European patents which do not reach the European Patent Office before the end of the fourteenth month as from the filing of the application or, if a priority has been claimed, as from the date of priority, shall be deemed to have been withdrawn. The application fee paid under Article 68 shall be refunded.⌋

Note :

The provisions of this Article which are shown in brackets will be re-examined in connection with Articles 113a et seq.



Article 68

Requirements of the application

- (1) An application for a European patent shall contain
  - (a) a request for the grant of a European patent,
  - (b) a description of the invention,
  - (c) one or more claims defining the protection applied for,
  - (d) any drawings referred to in the description or the claims.

The application shall be written in one of the languages referred to in Article 34, paragraphs 1 and 2.

Note:

The Working Party has not thought it necessary at this stage to include an abstract as an essential element of the application. However, this question will be re-examined later.

- (2) An application for a European patent shall be subject to the payment of the filing fee prescribed in the Rules relating to fees adopted pursuant to this Convention. This fee must be paid within one month after the filing date.

ad article 68

(3) - incorporated in Article 68b -

(4) - incorporated in Article 68b -

Article 68a (new)

Designation of Contracting States

(1) Requests for the grant of a European patent shall contain the designation of the Contracting State or States in which protection for the invention is desired.

(2) The designation of a Contracting State shall be subject to the payment of the fee prescribed in the Rules relating to fees adopted pursuant to this Convention. If payment is not made within a period of twelve months as from the filing of the application for a European patent or, if a priority has been claimed, as from the date or the earliest date of priority the designation shall be deemed to be withdrawn.

Note:

Partial payment will be dealt with in the Implementing Regulations on the lines of Rule 15.5 of the P.C.T.

(3) The designation of a Contracting State may be withdrawn at any time up to the grant of the European patent. Withdrawal of the designation of all the Contracting States shall be deemed to be a withdrawal of the application for a European patent. Designation fees paid shall not be repaid.

ad. article 68a (new)

(4) In so far as any group of Contracting States has availed itself of the authorisation given in Article 8a, it may provide that these States may only be designated jointly. The designation of one or some only of such States shall be deemed to constitute the designation of all the States of that group.

Article 68b

Date of the application

(1) An application for a European patent shall be deemed to be filed on the date on which the following conditions are satisfied :

- (a) an indication is given that the application is for a European patent, designating at least one Contracting State in accordance with Article 68, paragraph 1,
- (b) information has been given identifying the applicant,
- (c) the application contains a description and claims, even though they do not comply with the requirements of this Convention.

(2) - deleted - : cf. Article 68, paragraph 2, new additional sentence, and new Article 68c.

Article 68c (new)

Failure to pay the filing fee or to provide a translation

An application for a European patent shall be deemed to be withdrawn :

- (a) if the fee provided for in Article 68, paragraph 2, has not been paid within the prescribed time limit, or
- (b) if the translation of the application, in the case provided for in Article 34, paragraph 2, has not been produced within the time limit referred to in that Article.

Note:

Notification of withdrawal will be provided for in the Implementing Regulations.

Article 69

Unity of invention

The application for a European patent shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.

Article 70

Disclosure of the invention

(1) An application for a European patent must disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.

(2) - deleted -



Article 71

Requirements of the Implementing Regulations

An application for a European patent must satisfy the conditions laid down in the Implementing Regulations to this Convention.

CHAPTER II

PRIORITY

Article 72

Priority Rightt

(1) A person who has duly filed an application for a patent or for the registration of a utility model or for an inventor's certificate, or for a utility certificate, or his successors in title, shall enjoy, for the purpose of filing an application for a European patent in respect of the same invention, a right of priority during a period of twelve months from the date of filing of the first application.

-(2) - deleted, transferred to Implementing Regulations.