

BR/GT I/16 e/69

Travaux Préparatoires EPC 1973

Comment:

The collection represents purely an internal research tool for the purpose of Directorate Patent Law of the European Patent Office. No guarantee can be given for its completeness or correctness.

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 SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

Luxembourg, 17 October 1969
BR/GT I/16/69

- 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 73 to 86a

(Text drawn up by the Drafting Committee)

Article 73

Effect of priority right

The right of priority shall have the effect that the date of the first filing shall count as :

- (a) the date of filing the application for a European patent for the purposes of Article 11, paragraphs 2 and 3.
- (b) - deleted -

Note:

The question will be re-examined later whether to deny for prior art purposes the priority date claimed in European applications which are based on applications originating from States which do not, in their national laws, make the priority date of foreign patent applications effective also for prior art purposes, though generally including the content of patent applications in the state of the art as from the date of filing.

Article 74

Claiming priority

(1) Any person desiring to take advantage of the priority of a previous application shall be required, on filing the application for a European patent, to lodge a declaration with the European Patent Office indicating the date of the previous filing and the country in which it was made and mentioning the file number. Failure, on filing the application for a European patent, to indicate the date of the previous filing and the country in which it was made, or failure to give notice of the file number of the previous application before the end of the sixteenth month after the priority date, shall lead to the loss of the right to claim priority of filing.

(2) The European Patent Office may require any person making a declaration of priority to produce a copy of the first application, including the description, claims and drawings, within a period to be laid down by the Office which shall expire not earlier than four months after the date of applying for a European patent. The copy must be certified as correct by the authority which received the first application. A certificate issued by that authority stating the date of filing shall be attached to the copy. Failure to produce the copy and the certificate in due time shall lead to the loss of the right to claim priority of filing.

ad Article 74

(3) Multiple priorities may be claimed in a single application for a European patent, notwithstanding the fact that they originate in different countries.

(4) If one or more priorities are claimed in the application for a European patent, the right of priority may cover only those elements of the application for a European patent which are included in the application or applications for a patent whose priority is claimed.

(5) The particulars mentioned in paragraph 1 shall be entered in the Register of European Patents, be published in the European Patent Bulletin, and appear in the publication under Article 86a and also in the printed specification of the European patent.

(6) If certain elements of the invention for which priority is claimed do not appear among the claims formulated in the first application, priority may nonetheless be granted, provided that the application documents of the first filing as a whole specifically disclose such elements.

Article 75

Equivalence of national filing with European filing

(1) An application for a European patent shall, in the Contracting States designated pursuant to Article 68a, be equivalent to a regular national filing.

(2) The procedure for the grant of a national patent may not be initiated on the basis of an application for a European patent, except under the conditions laid down in Articles 114 to 116.

PART V

GRANT OF A EUROPEAN PATENT

CHAPTER I

PROCEDURE UP TO NOVELTY SEARCH

Article 76

Examination of the European patent application for
formal and obvious deficiencies

(1) The Examining Section shall determine whether an application for a European patent complies with the requirements of Articles 68, 68a and 68b.

(2) When an application for a European patent has been validly made, the Section shall examine :

- (a) whether, by its nature, the subject matter of the application is obviously not an invention within the meaning of Article 9;
- (b) whether the invention is obviously not patentable by virtue of Article 10;
- (c) whether the invention is obviously not susceptible of industrial application within the meaning of Article 14;
- (d) whether the application is obviously contrary to Article 69 and 70;

ad article 76

- (e) whether the application satisfies the requirements regarding form laid down in the Implementing Regulations to this Convention and whether the contents of the description, claims and drawings are not obviously contrary to the relevant provisions of the Implementing Regulations;
- (f) whether, in the case of an application for a patent of addition, the subject of that application is obviously not an improvement, development or supplementing within the meaning of Article 24, paragraph 1.

Article 77

Notification and refusal of the application

(new)(1) If the examination provided for under Article 76, paragraph 1, reveals that the European patent application does not comply with the requirements of Articles 68, 68a and 68b, the Examining Section shall decide that the application is not validly made and shall notify the applicant accordingly.

(2) If the examination provided for in Article 76, paragraph 2, reveals that the invention or the application for a European patent does not meet the requirements to be taken into consideration in this examination, the Examining Section shall inform the applicant accordingly and invite him to make observations or to remedy the disclosed deficiencies within a period to be fixed by the Section. The description, claims and drawings may be amended only to an extent sufficient to remedy the disclosed deficiencies in accordance with the observations of the Examining Section.

(3) If the Examining Section finds that the invention is obviously not new, it may inform the applicant accordingly.

ad Article 77

(4) If, on expiry of the period referred to in paragraph 2, it appears that the invention or the application for a European patent fails to meet the requirements referred to in that paragraph, the Examining Section shall refuse the application.

(5) The application may not be refused on grounds which have not previously been notified to the applicant in accordance with paragraph 2.

Article 78

Obtaining of report on the state of the art

(1) If the examination reveals that the invention and the application for a European patent meet the requirements to be taken into consideration in the examination, the Examining Section shall request the applicant to pay, within a period of one month, the fee for obtaining a report on the state of the art as prescribed by the Rules relating to fees adopted pursuant to this Convention.

Note:

If a report on the state of the art has already been requested from the International Patent Institute at The Hague in respect of an application the priority of which has been claimed for a European patent application, and if it has been requested that this report should also take into consideration the criteria laid down in this Convention, the Rules relating to fees will have to prescribe that part of the fee will be repaid to the applicant if the report relating to the European patent application is based wholly or partly on the first report.

ad article 78

(new) (1 bis) If the fee is not paid in due time, the application for a European patent shall be deemed to be withdrawn.

(2) On the date of payment of the fee or, if the latter has already been paid, on concluding the examination, the Examining Section shall request the International Patent Institute at The Hague to supply a report on the state of the art and shall transmit to it the documents of the application for the European patent.

(2a) The report on the state of the art shall be drawn up on the basis of the claims, with due regard to the description and the drawings, if any.

(3) If an additional report on the state of the art becomes necessary, by reason of lack of unity of the invention, the Examining Section shall invite the applicant, at his option, within a period of one month, either to restrict the application to one invention or to pay the additional fee prescribed by the Rules relating to fees adopted pursuant to the Convention.

(4) If the applicant does not restrict the application to one invention only and the fee is not paid in due time, the part of the application which is not covered by the search report shall be deemed to have been withdrawn.

ad article 78

(new) (5) Any fee which has been paid under paragraph 3 shall be refunded if, during the examination under Article 94, the applicant requests a refund and the Examining Division finds that the invitation referred to in the said paragraph was not justified.

Article 79

Transmission of the report on the state of the art

(1) On receipt of the report on the state of the art, the European Patent Office shall transmit it to the applicant.

(2) - - deleted -

Article 80

Division of the application

(1) An applicant may divide his application for a European patent by limiting it and by filing divisional applications in respect of the inventions thus excluded from the application in the following circumstances

- (a) in response to the invitation referred to in Article 77, paragraph 2, or Article 78, paragraph 3 ;
- (b) at any time after he has received the report on the state of the art and up to the filing of a request for examination.

(2) The limitation must be effected by an amendment to the claims pursuant to Article 81, paragraph 1, or by a notice of abandonment of a part of the description or drawings. This notice may include a proposal to insert a cross-reference to a divisional application filed in respect of the subject matter contained in the abandoned part.

(3) The amended application instead of the original application shall determine the protection sought in so far as its subject matter does not extend beyond what was disclosed in the original application.

ad Article 80

(4) Divisional applications shall be deemed to be filed on the date of the original application, and shall have the benefit of any right to priority, in so far as their subject matter does not extend beyond what was disclosed in the original application, provided that the divisional applications have been filed within a period of two months after the limitation referred to in paragraph 1.

(5) The filing fee referred to in Article 68, paragraph 2, must be paid in respect of each divisional application within a period of one month after the filing thereof.

Article 81.

Amendment of claims

(1) The applicant may inform the European Patent Office, after he has received the report on the state of the art, that he abandons one or more of the original claims of his application, or he may submit to the European Patent Office new or amended claims.

(2) If the applicant avails himself of the right referred to in paragraph 1, the new or amended claims instead of the original claims shall determine the protection sought in so far as their subject matter does not extend beyond what was described in the application.

(3) If the new or amended claims are obviously no longer covered by the report on the state of the art, the European Patent Office may request an additional report from the International Patent Institute at The Hague.

Note :

Old Article 82.

Article 82

Amendment of document

Without prejudice to Article 77, paragraph 1, and Articles 80 and 81, the description, claims or drawings of an application for a European patent may not be amended except for the purpose of correcting linguistic or clerical errors or obvious mistakes.

Note :

Old Article 81

Article 83

Hearings before the Examining Section

The Examining Section shall give a hearing to the applicant either on its own initiative or at his request, where it considers this to be expedient. It must give a hearing to the applicant on his request if it proposes to give a decision refusing the application wholly or in part.

Article 84

Grant of the provisional European patent

- deleted -

Article 85

Publication of a provisional European patent

- deleted ; see Article 86a -

Article 86

Official certificate for a provisional European patent

- deleted -

Article 86a

Publication of a European patent application

(1) European patent applications shall be published as soon as possible after the expiry of a period of 18 months from the filing of the patent application or, if a priority has been claimed, as from the date or earliest date of priority. Nevertheless, at the request of the applicant the application may be published before the expiry of the period referred to above. The publication shall contain the description, the claims and any drawings and, in an annex, the report on the state of the art, in so far as the latter is available at the time of publication.

(1a) The Contracting States designated in accordance with Article 68a shall be specified in the publication.

(1b) If before such publication, the European patent application has been divided pursuant to Article 80, or the claims amended pursuant to Article 81, the original patent claims shall be included in the publication in addition to the new or amended claims.

Note:

It is proposed either to publish only the new or amended claims or to publish the new or amended claims in the three languages and the original claims in only one of these languages.

ad article 86a

(1c) Publication shall not take place if the European patent application has been finally refused or withdrawn or deemed to have been withdrawn before the termination of the technical preparations for publication. In this event a third of the application fee shall be refunded.

(2) Notification of the publication shall be entered in the Register of European Patents and published in the European Patent Bulletin.