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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 SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

Brussels, 20 October 1969
BR/GT I/19/69

- 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 86b to 96 and 112a

(Text drawn up by the Drafting Committee)

Article 86b (new)

Publication of the lapse of a European patent application

If a European patent application published in accordance with Article 86a is refused or withdrawn or deemed to have been withdrawn, notification thereof shall be entered in the Register of European Patents and published in the European Patent Bulletin.

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Article 87

Commencement of protection

- deleted -

Article 87a

Observations concerning the patentability of the invention
in respect of which an application has been filed

(1) Following the publication of the European patent application, any person may present his observations concerning the patentability of the invention in respect of which an application has been filed. Such observations must be made in writing and must include a statement of the grounds on which they are based.

(2) The observations referred to in paragraph 1 shall be communicated to the applicant.

CHAPTER II
EXAMINATION FOR NOVELTY

Article 88

Request for examination

(1) The European Patent Office shall examine, on request, whether a European patent application and the invention which forms the subject thereof meet the requirements of this Convention.

(2) Such a request may be made by the applicant or by any other person up to the end of $\lceil x \rceil$ years from the filing of the European patent application. The request shall not be considered to be made until after the examination fee prescribed by the Rules relating to fees adopted pursuant to this Convention has been paid.

(3) If the request is made by the applicant he shall, when making his request, comment on the report on the state of the art and any observations communicated to him and shall where necessary amend the description, claims and drawings.

(3a) If the request is made in respect of an application for a European patent of addition, the Examining Section shall invite the applicant to make a request in accordance with paragraph 1 in respect of the application for the parent patent before the end of two months after such invitation has been made. If no such request is made, the application for a European patent of ~~addition~~ shall be deemed to be an application for an independent European patent.

ad Article 88

(4) The request may not be withdrawn.

(5) When a request for examination has been made in conformity with paragraph 2, any subsequent requests for examination shall be regarded as void. Any fees paid shall be refunded.

(6) If no request for examination has been made by the end of the period referred to in paragraph 2, the European patent application shall be deemed to have been withdrawn.

Note :

This Article will be re-examined in the light of the fresh proposals of the Chairman of Working Party I.

Article 89

Transfer of proceedings to the Examining Division

As soon as a request for examination of a European patent application has been made, the proceedings shall be transferred to an Examining Division, but not before the receipt of the report on the state of the art.

Article 90

Publication of a request for examination

(1) Notification of the request for the examination of a European patent application shall be entered in the Register of European Patents and published in the European Patent Bulletin.

(2) The request shall be communicated to the applicant if it has not been made by him.

Article 90a

Reply of the applicant for a European patent

(1) If the applicant has made the request for examination before the report on the state of the art has been communicated to him, or if the request for examination has not been made by the applicant himself, the European Patent Office shall invite the applicant to state, within a period to be determined, whether he desires to proceed further with his application, and to comment within the same period, on the report on the state of the art and any observations communicated to him, and where necessary to amend the description, claims and drawings.

(2) (new) If the applicant does not indicate within the period fixed in paragraph 1 that he wishes to proceed with his application, the application shall be deemed to be withdrawn.

Article 91

Notice of intervention

- deleted -

Article 92

Observations concerning the validity of a provisional
European patent

- incorporated in Article 87a -

Article 93

Reply of the proprietor of a provisional
European patent

- deleted -

Article 93a

Limitation of amendment of claims

- incorporated in Article 97b -

Article 94

Examination of a European patent application

(1) The Examining Division shall commence the examination of the European patent application on receipt of the request for examination, provided that the applicant has commented on the report on the state of the art and the observations communicated to him, or the period provided for this purpose in Article 90a, paragraph 1, has expired. Only the applicant shall take part in the proceedings before the Examining Division.

(2) - incorporated in Article 88, paragraph 1 -

(3) The Examining Division may obtain an additional report on the state of the art from the International Patent Institute at The Hague. If the Examining Division finds that the additional report is necessary because of amendments to the claims made by the applicant, it shall invite the applicant to pay within one month the additional fee prescribed by the Rules relating to fees adopted pursuant to this Convention. If within the period fixed, the additional fee has not been paid, the application shall be deemed to be withdrawn.

Article 95

Notification of the result of the examination

(1) If the examination of a European patent application reveals that the application or the invention to which it relates does not meet the requirements of this Convention, the Examining Division shall notify the applicant accordingly and shall invite him to present his observations or rectify the irregularities discovered and if necessary to submit the description, claims and drawings in an amended form, within a period to be fixed by the Division.

(2) The notification of the results of the examination must be a reasoned statement indicating all the reasons against the grant of the European patent.

Article 96

Re-publication of the European patent application

(1) If the Examining Division is of the opinion that the application and the invention for which it relates meet the requirements of this Convention, it shall inform the applicant and, where applicable, the third party who made the request for examination, of the form in which it intends to grant the European patent.

(2) [The European Patent Office shall publish a specification containing the description, the claims and any drawings in the form referred to in paragraph 1. The Contracting States designated by the applicant shall be referred to in the specification. A notice indicating that the specification has been published shall be inserted in the European Patent Bulletin. A reference to this notice shall be entered in the Register of European Patents.]⁷

(3) [If the European patent application has not yet been published in accordance with Article 86a, a publication containing the description, claims and any drawings shall be made at the same time as the publication pursuant to paragraph 2.]⁷

Note :

This Article will be re-examined. The wording of paragraph 3 ("publication pursuant to paragraph 2") does not seem to be consistent with the wording provisionally adopted for paragraph 2.

Article 112a (new)

Decision of the Enlarged Board of Appeal
on certain points of law

(1) In order to ensure uniform application of the law,
or if an important point of law arises :

(a) the Board of Appeal shall, during proceedings on a case,
refer any question to the Enlarged Board of Appeal when
a decision is required for the above purposes ;

(b) 1st variant :

the President of the European Patent Office may at any
time ask the Enlarged Board of Appeal for an opinion on
any such question, except where such question arises in
proceedings on a case.7

2nd variant :

the President of the European Patent Office may refer a
point of law to the Enlarged Board of Appeal where two
Boards of Appeal have given conflicting decisions on that
question.7

(2) The decision of the Enlarged Board of Appeal referred
to in paragraph 1 (a) shall be binding on the Board of Appeal
in respect of the appeal in question.

Note :

The Working Party has still to decide on this proposition,
the text of which has been drawn up by the Drafting
Committee.