

BR/GT I/21 e/69

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

Brussels, 12 November 1969
BR/GT I/21/69

- 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 88, 88a (new) and 88b (new)

BR/GT I/21 e/69 mk

Introductory Note

During the last meeting of the Working Party in Luxembourg from 14 to 17 October 1969, the Chairman put forward proposals for amending the system of deferred examination proposed in working document BR/GT I/9/69 (cf. Article 88). The Chairman's proposals were summarized by the Drafting Committee in BR/GT I/20/69 of 20/10/69.

The Working Party reserved its position until its next meeting and asked the Chairman, in the meantime, to submit his proposals in the form of Articles.

The Chairman's proposals for Articles 88, 88a and 88b are put forward herewith.

EXAMINATION FOR NOVELTY

Article 88

Request for examination

New proposal by the Chairman

(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 seven 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.

(4) The request may not be withdrawn.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.

Note :

The only difference between this proposal and the text of Article 88 as drafted by the Working Party is that the figure seven has been inserted in the first sentence of paragraph 2.

New proposal by the Chairman

(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 be withdrawn.

Article 88a (new)

Special provisions for a request for examination made by a third party

New proposal by the Chairman

(1) A request for examination made by a third party shall also be valid when such third party pays only a quarter of the examination fee and asserts at the time of payment, with supporting evidence, that he has a justified interest in the immediate examination of the application.

(2) If the Examining Division recognises that this interest is justified, it shall invite the applicant to pay three quarters of the examination fee within a period of six months ; if this sum is not paid within this period, the application shall be deemed to be withdrawn.

(3) If a further request for examination is made before the above-mentioned interest is recognised as being justified, and the full examination fee is paid, the request pursuant to paragraph 1 shall be deemed not to have been made.

(4) The quarter of the examination fee paid by the third party shall be refunded only in the circumstances described in paragraph 3.

Note :

This article corresponds to paragraph 4 of the Chairman's proposals in the Annex to BR/GT I/20/69 of 20/10/69.

If the proposed rule is thought to be too complicated, it could be provided that a request for examination made by a third party, without assertion of a justified interest, can only be made on payment of a quarter of the examination fee.

Article 88b (new)

Modification of the procedure by the Administrative Council

New proposal by the Chairman

(1) The Administrative Council may reduce or prolong the period laid down in Article 88, paragraph 2, for making a request for examination.

(2) In certain areas of technology, the Administrative Council may direct that applicants are to make a request for examination on the invitation of the European Patent Office, where such ruling is in the public interest.

(3) In certain areas of technology, the Administrative Council may direct that applicants are to make a request for examination on the invitation of the European Patent Office, when the work load of the European Patent Office permits of immediate examination in this area.

(4) Where a direction pursuant to paragraphs 2 or 3 is in force, the European Patent Office shall invite the applicant to make a request for examination, and to pay the examination fee, within a period of six months. If the fee is not paid in due time, the European Patent application shall be deemed to be withdrawn.

Note :

This Article corresponds to paragraphs 1 to 3 of the Chairman's proposals in the Annex to BR/GT I/20/69 of 20/10/69.

It could be included in the final provisions.

Further details concerning procedure for implementing the directions of the Administrative Council could be laid down in the Implementing Regulations.

