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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

Brussels, 19 November 1969
BR/GT I/23/69

- Secretariat -

NOTE

The members of Working Party I will find annexed the draft report on Articles 31 to 41 of the Preliminary Draft Convention for a European System for the Grant of Patents, drawn up by the French delegation, as agreed at the meeting of Working Party I at Luxembourg on 8 - 11 July 1969 [BR/7/69 page 2, point 2, paragraph 2_7.

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ANNEX

P R E L I M I N A R Y D R A F T
CONVENTION FOR A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

Part III - The European Patent Office
Chapter I - Status and General Organization

DRAFT REPORT

1. After defining the basic principles (Part I) and then establishing substantive patent law (Part II), the Preliminary Draft Convention deals, in Part III, with the administrative and financial organization of the "European Patent Office", which is a body "common to the Contracting States" responsible for the application of this law as regards the grant of patents.

Chapter I of Part III contains Articles 31 to 41, which were of identical tenor in the EEC and EFTA drafts. These Articles lay down the broad outlines of the administrative arrangements applicable to the international body, which will have to be supplemented or further defined either in the Convention itself or in the Implementing Regulations. Substantial amendments have been made to these Articles only where it was necessary to take account of the fact that, at the present stage, the setting up of a European Patent Court is no longer envisaged.

2. In its present form, the Preliminary Draft Convention proposes that the European Patent Office be "endowed with administrative and financial autonomy" (Article 31 (1)) and "legal personality" (Article 32 (1)). These provisions are, then, aimed at setting up an inter-governmental organization having its own administrative and financial arrangements, independent of any other existing institution, and enjoying, in each of the Contracting States, the most extensive legal capacity, allowing it in particular to acquire or transfer movable and immovable property, and to sue and be sued in its own name (Article 32 (2)).
3. The European Patent Office is to be directed by a "President", assisted by "Vice-Presidents" (Article 36 (1) and (3)) and his activities will be supervised by an "Administrative Council" (Article 31 (2)).
4. The President will be responsible to the Administrative Council for the activities of the European Patent Office (Article 36 (1)).

The powers of the President (Article 36) fall under four categories:

- (a) He has to ensure the correct application of the provisions of the Convention and its Implementing Regulations. To this end, he will take all necessary steps to inform the public or to instruct the personnel placed under his authority, and to improve the organization and functioning of his administration.

- (b) He exercises supervisory authority over the whole of the personnel and may appoint and promote them and exercise disciplinary authority over them, save over the Vice-Presidents and the members of the Boards of Appeal.
- (c) He must prepare the budget and implement it after its approval by the Administrative Council, to whom he must submit the annual accounts, the balance sheet and a management report.
- (d) He may place before the Administrative Council any proposal on which he is not competent to decide, such as any proposal for amending the Convention or its Implementing Regulations.

5. The composition, duties and operation of the Administrative Council have not yet been studied by the Working Party, but will be the subject of provisions to be introduced into the Convention.

However, it will be recalled that the Memorandum adopted by the Inter-Governmental Conference at its first meeting provides that the Administrative Council should have an inter-governmental character, and that the Member States should be represented on an equal basis, which implies that the decisions of the Council would be directly binding on the Governments without having to pass through a higher instance. In accordance with the Memorandum the principal tasks of the Administrative Council would be: laying down the service regulations, the appointment of the senior officials, the adoption of the budget, and the administrative and financial control of the European Patent Office.

On the subject of the appointment of the senior officials, Article 37 lays down that the President, the Vice-Presidents and the members of the Boards of Appeal are to be appointed by decision of the Administrative Council.

In addition, Articles 31 and 36, which have already been referred to, in effect endow the Administrative Council with budgetary powers and powers as regards administrative ~~and~~ financial control,

Article 36 (2)(b), which gives the President the right to act on his own initiative as regards regulations, implies that the regulatory powers granted to the Administrative Council will not be restricted to the service regulations, which the Memorandum indicates as an area within the competence of the Council.

6. The powers of the President and of the Administrative Council (acting in a select committee) may extend beyond the normal field of application of the Convention for a European System for the Grant of Patents (Article 31 a), since Article 8 a of the Preliminary Draft provides that "any group of Contracting States may provide by a special agreement that a European patent granted for all those States has a unitary character throughout their territories and is subject to the provisions of that special agreement." The Member States of the EEC are at present drawing up an agreement of this nature, intended to make the "unitary patent" granted for the whole of the territories of their States subject to a unitary law - in particular as regards revocation - which requires the setting up of special bodies, such as Revocation Boards.

The aim of Article 31 a is to allow for the setting up of such special organs within the European Patent Office, reserved for the use of the States signatory to such a special agreement. These organs set up within the European Patent Office will be placed under the authority of the President but, of course, their operating expenses will be borne only by the States signatory to the special agreement, and the administrative and financial control of this additional part of the administrative machinery of the European Patent Office will only be exercised by these States, meeting within a select committee of the Administrative Council.

Naturally, the select committee will have certain links, whose form is to be fixed, with the Administrative Council as a whole, in particular on the occasion of the discussion and adoption of the budget of the European Patent Office.

7. Under the present provisions of Article 33, the administration of the European Patent Office will be concentrated in a single headquarters.

However, should it deem it necessary, the Administrative Council may decide to create branches for information and liaison in the Contracting States or with the International Patent Institute at The Hague or with other organizations in the field of industrial property. The name given to these branches indicates the limit of their functions, and their creation clearly could not lead to any real decentralization of the European Patent Office.

This is not at all the case as regards the proposal submitted by the British delegation for the setting up, in view of the languages used for the filing of patent applications, of "Branch Examining Offices" in certain Contracting States. The present report will limit itself to mentioning this proposal, since the matter has not yet been discussed by the Working Party.

8. The languages in use at the European Patent Office will be English, French and German (Article 34).

However, an exception must be made in respect of nationals of or persons domiciled in Contracting States where none of the three languages of the European Patent Office is an official language. In such a case, the patent application and the documents to be produced by the applicant during the proceedings may be drawn up in an official language of the Contracting State concerned (e.g. Italian for an Italian or Swiss national), provided that a translation into one of the languages of the European Patent Office is supplied within a time limit specified in the Implementing Regulations.

Official publications of the European Patent Office will appear in the three languages. This applies to entries in the Register of European Patents, to the European Patent Bulletin and to the Official Journal of the European Patent Office and to published claims, whether of patent applications or of patents themselves. On the other hand, for reasons of economy,

the description of the invention will only be published in the language used for filing the application, or in that of the translation if, for example, Italian was used for filing the application.

9. Article 35 of the Preliminary Draft establishes the principle that the European Patent Office is to enjoy certain privileges and immunities in the territory of the Contracting States, under conditions to be defined in a separate Protocol.
10. All officials and employees of the European Patent Office are to be bound by the rules of professional secrecy (Article 38), and may not file applications for patents, either directly or through an intermediary. The rules governing the recruitment, promotion, remuneration and discipline of officials and employees will, as has already been stated, be laid down in service regulations to be adopted by the Administrative Council.
11. In the earlier EEC and EFTA drafts, disputes between the European Patent Office and its staff relating to the implementation of the service regulations (Article 39) fell within the competence of an International Court. This is not a viable solution if it leads to excessive financial burdens, as would be the case if the number of cases brought before this Court were small. The drafters of the EEC draft did not envisage the creation of a "European Patent Court", to which Article 4 of that text (now deleted) referred, but intended to entrust the "Court of Justice of the European Communities" with the settlement of the disputes in question and the control of the legality of the decisions of the Administrative Council and of the President of the European Patent Office (Article 41, now deleted - see point 13 below) and with wider competences

in respect of activities relating to European patents. However, it is not possible to entrust this ultimate jurisdiction to the Court of Justice of the European Communities in a European system for patents which involves other States besides the Member States of the EEC.

As, furthermore, in the present opinion of the Working Party it is not considered indispensable to set up an International Court of Justice, Article 39 of the Preliminary Draft awards competence to settle any dispute between the European Patent Office and its servants to an "Appeals Committee", whose Statute will have to be set out in a special regulation. This appears to be a viable solution, since many inter-governmental organisations deal with the settlement of disputes of this nature by referring to Appeals Committees, variously composed, but always including members not belonging to the organisation concerned. Such is the case, for example, with the International Patents Institute and BIRPI.

In the same spirit, it is proposed in Article 39 to set up an Appeals Committee whose Statute will have to be set out in a special regulation.

12. In the matter of the liability of the European Patent Office, the provisions of Article 40 have been taken from the Treaty of Rome establishing the EEC, and, in particular, from Article 215 thereof.
13. Finally, as has been stated above, the fact that the setting up of an International Court of Justice is no longer envisaged leads to the abandonment of the control of the

legality of the decisions of the Administrative Council and of the President of the European Patent Office, as had been provided for in Article 41 of the EEC and EFTA drafts. This omission seems to bear little practical significance, if one refers to the existing inter-governmental institutions, such as the International Patent Institute or BIRPI, which do not have any such control and where the absence of this control has not led to any difficulties.
