

BR/GT I/28 e/69

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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

Luxembourg, 25 November 1969

BR/GT I/28/69

- Secretariat -

WORKING PARTY I

WORKING DOCUMENT

PRELIMINARY DRAFT
FOR A CONVENTION FOR A
EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

Articles 105 to 112a (new)

(Text drawn up by the Drafting Committee)

CHAPTER III

APPEALS

Article 105

Decisions subject to appeal

(1) An appeal shall lie from decisions of the Examining Sections and Examining Divisions.

(2) A decision which does not terminate proceedings as regards one of the parties can only be the subject of an appeal together with the final decision.

(3) The allocation of costs of proceedings cannot be the sole subject of an appeal.

(4) A decision fixing the amount of costs of proceedings cannot be the subject of an appeal unless the amount is in excess of

Article 106

Effect of appeals

An appeal shall have suspensive effect.

Article 107

Persons entitled to appeal and to take part
in appeal proceedings

Any party to proceedings who was adversely affected by a decision may appeal. The other participants in the proceedings shall be parties to the appeal proceedings as of right, with the exception of those who have abandoned that right.

Article 108

Time-limit and form of appeal

An appeal must be lodged, in writing, at the European Patent Office within a period of two months from the date of the decision appealed from ; it must set out the grounds on which it is based. An appeal shall not be deemed to be lodged until after the payment of the fee for appeal prescribed by the Rules relating to fees adopted pursuant to this Convention. An additional written statement setting out the grounds of appeal in greater detail may be submitted within a period of one month after the lodging of the appeal.

Article 109

(1) If the authority whose decision is contested considers the appeal to be admissible and well founded, it shall rectify its decision.

(2) If the appeal is not allowed within a period of two months following its receipt, it shall be remitted to the Board of Appeal without delay, and without comment as to its merit.

(3) The provisions of paragraph 1 shall not apply where the appellant is opposed by another party to the proceedings. In this case the appeal shall be remitted to the Board of Appeal as soon as it is lodged.

Article 110

Examination of appeals

(1) If the appeal is admissible, the Board of Appeal shall examine the facts ; this examination shall not be restricted to the arguments or contentions of the parties concerned.

(2) The Board of Appeal may disregard fresh facts or evidence submitted by the parties concerned which were not included in the statement of grounds of appeal or in the reply to the appeal.

(3) The Board of Appeal may ask the Examining Section for further information concerning the state of the art, or may obtain an additional report on the state of the art from the International Patent Institute at The Hague. If the Board of Appeal 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 the additional fee has not been paid within the period fixed, the application shall be deemed to be withdrawn.

Note on paragraph 3

The question of whether it should be laid down in Article 165, or elsewhere, who is to meet the cost of an additional report where this is not made necessary by amendments to the claims made by the applicant, but on account of other circumstances, will be re-examined later.

Article 111

Hearings on appeal

A hearing on appeal may take place either at the request of a party or at the instance of the Board of Appeal if it considers this to be expedient.

Article 112

Decision in respect of appeals

(1) If the appeal does not comply with Articles 105, 107 and 108 or with the provisions of the Implementing Regulations to this Convention, the Board of Appeal shall reject it as inadmissible.

(2) If, following the examination specified in Article 110, paragraph 1, the Board of Appeal considers that the appeal cannot be allowed, it shall dismiss it as unfounded.

(3) If the appeal is allowable in whole or in part, the Board of Appeal shall annul the decision attacked, in whole or in part. The Board may either continue the proceedings up to and including the communication provided for in Article 96, paragraph 1, or decide on the grant of the European patent, or if, having regard to the state of the proceedings, it should consider such action necessary, it may remit the matter for further decision to the authority responsible for the decision in question.

(4) If the Board of Appeal remits the matter for action by the authority which issued the decision in question, such authority shall ensure that its final decision in the matter conforms with that of the Board of Appeal. If the decision in question emanated from the Examining Section, the Examining Division shall also be bound by the decision of the Board of Appeal.

(5) The decision of the Board of Appeal may only be based upon facts or evidence on which the parties concerned have had an opportunity to present their comments.

Article 112a (new)

Decision or opinion 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) the President of the European Patent Office may :

[- at any time ask the Enlarged Board of Appeal for an
opinion on any question, except where such question
arises in proceedings on a case.]

- refer a point of law to the Enlarged Board of Appeal
where two Boards of Appeal have given different decisions
on that question.

Note:

The Working Party points out that the second sub-section
of sub-paragraph (b) limits the President's power to
refer a matter to the Enlarged Board of Appeal. The Working
Party was unable to agree on the advisability of giving
the President the power provided for in the first sub-
section of sub-paragraph (b). This question must be
re-examined in consultation with the national legal
advisers.

Article 112a (new) (contd.)

(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.