

# BR/GT I/32 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, 28 November 1969  
BR/GT I/32/69

- Secretariat -

WORKING PARTY I

WORKING DOCUMENT

PRELIMINARY DRAFT  
CONVENTION FOR A

EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

New opposition procedure

(Text drawn up by the Drafting Committee)

Article 20<sup>ter</sup>

Rights conferred by a European patent application  
after publication of the claims

- deleted -

Article 94a

Division of a European patent application

(1) After a request for examination has been made, any European patent application covering more than one invention shall be divided into a number of patent applications, each of which must cover at least one invention :

- (a) at the request of the applicant, if the Examining Division considers the division of the patent application to be justified ;
- (b) on the invitation of the Examining Division, if the European patent application does not meet the requirements of Article 69.

(2) Article 80, paragraphs 3 to 5, shall apply.  
(Rest deleted)

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 95a

Refusal of a European patent application

(1) The Examining Division shall refuse a European patent application if it is of the opinion that the requirements referred to in Article 88, paragraph 1, have not been met.

(2) A European patent application may not be refused on grounds which have not previously been communicated to the applicant.

(3) The decision shall be communicated to the parties concerned.

(4) When the refusal of a European patent application has become final, it shall be entered in the Register of European Patents and published in the European Patent Bulletin.

Note :

Old Article 100; also see new Article 101, paragraph 1.

Article 96

Grant of the European patent

(1) If the Examining Division is of the opinion that the application and the invention to 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. The applicant shall at the same time be requested to pay, within a period of one month, the fees prescribed for grant and printing by the Rules relating to fees adopted pursuant to this Convention.

(1a) If the fees for grant and printing are not paid in due time, the European patent application shall be deemed to be withdrawn.

(2) When the fees for grant and printing, and the fees already due under Article 119 and Article 120 have been paid, the Examining Division shall grant the European patent for the Contracting States designated in accordance with Article 68a. The decision shall be communicated to the parties concerned.

(3) The grant of a European patent shall be entered in the Register of European patents and published in the European Patent Bulletin.

Note :

The first sentence of paragraph 1 has been taken from old Article 96, paragraph 1 (in doc. BR/9/69). The remaining provisions are derived from the existing Article 101 (in doc. BR/GT I/9/69).

Article 96a

Publication of a European patent

- (1) At the same time as it publishes the grant of the European patent, the European Patent Office shall publish a specification of the European patent containing the description, the claims and any drawings.
- (2) The Contracting States for which the European patent has been granted shall be designated in the specification.
- (3) The specification shall contain an indication of the time limit for opposing the grant of the patent under Article 96c.

Note :

Paragraphs 1 and 2 are taken from the old Article 103 (in doc. BR/GT I/9/69); paragraph 3 is new.



Article 96aa

Certificate for a European patent

(1) As soon as the patent specification has been published, the European Patent Office shall issue to the proprietor of the patent a certificate for a European patent, to which the specification shall be annexed.

(2) The certificate shall certify that the European patent has been granted, in respect of the invention described in the patent specification, to the person named in the certificate, for the Contracting States designated in the specification.

Article 96b

Translation of specifications

(1) If the specification of a European patent has not been drawn up in one of the official languages of a Contracting State for which the European patent has been granted, that State may prescribe that the proprietor of the European patent must send to the national central industrial property office, within a period of not less than three months after the date of publication of the grant of the patent in the European Patent Bulletin:

- (a) a translation of the specification into an official language of that State, or
- (b) a fee for the preparation of an official translation of the specification into an official language of that State.

(2) Any Contracting State which has adopted provisions pursuant to paragraph 1 may further prescribe that the proprietor of the patent must pay all or part of the costs of publication of such translation within the period referred to in paragraph 1.

(3) Any Contracting State may prescribe that, in the event of failure to observe a provision adopted in accordance with paragraph 1 or 2, the European patent shall be deemed to have been void in that State ab initio.

Note :

This Article corresponds word for word to Article 123c as already approved by the Drafting Committee (see doc. BR/GT I/29/69).

Article 96c

Opposition

(1) Within a period of twelve months from the date of the publication pursuant to Article 96, paragraph 3, any person may give notice to the European Patent Office of opposition to the European patent granted. Notice of opposition shall be given in a reasoned statement in writing. It shall not be deemed to have been given until the fee prescribed in the Rules relating to fees adopted pursuant to this Convention has been paid. No fee shall be payable for opposition if the notice of opposition is given by the third party who made the request for examination.

(2) Third parties who have given notice of opposition as provided for in paragraph 1 shall take part in the opposition proceedings with the proprietor of the patent.

(3) The Examining Division shall notify the proprietor of the patent of any opposition raised and shall invite him to present his observations within a period to be fixed by the Division. The observations of the proprietor of the patent shall be communicated to the other parties concerned.

Note :

This Article corresponds to old Article 96a.

Article 97

Notification of examination in opposition proceedings

If, after having examined the oppositions, the Examining Division considers that the European patent should not have been granted, Article 95 shall apply mutatis mutandis. The notification of examination and the observations of the proprietor of the patent shall be communicated to the other parties concerned.

Article 97a

Reply of the parties concerned

The Examining Division shall invite the other parties concerned to comment, within a period to be fixed by the Division, on the observations of the proprietor of the patent in so far as these contain substantial new elements or in so far as the Examining Division considers this expedient for other reasons.

Article 97b

Limitation of amendment of claims

The claims of the European patent may not be amended during opposition proceedings in such a way as to extend the protection conferred.

Article 98

Division of a European patent during opposition proceedings

- deleted -

Article 99

Termination of proceedings on lapse of a European patent

- deleted -



Article 100

Refusal of a European patent application

- deleted -

Article 101

Decision in opposition proceedings

(1) If the Examining Division is of the opinion that the requirements referred to in Article 88, paragraph 1, have not been met, it shall revoke the European patent.

(2) If the Examining Division is of the opinion that the requirements referred to in Article 88, paragraph 1, have been met, without any need to amend the specification, it shall reject the opposition.

(3) If the Examining Division is of the opinion that, taking into consideration the amendments made by the proprietor of the patent during the opposition proceedings, the requirements referred to in Article 88, paragraph 1, have been met, it shall inform the parties that it intends to maintain the European patent as amended and shall request the proprietor of the patent to pay, within a period of one month, the fee prescribed for the printing of a new specification by the Rules relating to fees adopted pursuant to this Convention.

If the fee is not paid in due time, the European patent shall lapse.

When the fee for the printing of the new specification has been paid, the Examining Division shall decide to maintain the European patent as amended.

(4) The decision on the opposition shall be communicated to the parties concerned, and shall be entered in the Register of European Patents and published in the European Patent Bulletin.

Article 102

Hearing before the Examining Division

The Examining Division shall give a hearing to the parties concerned, either on its own initiative or at their request, where it considers this to be expedient.

Note :

A similar provision should be inserted in the appropriate place among the provisions for the examining procedure.

Article 103

Publication of a new specification

(1) If a European patent is amended under Article 101, paragraph 3, the European Patent Office shall, at the same time as it publishes the decision on the opposition, publish a new specification of the European patent containing the description, the claims and any drawings, in the amended form.

(2) Article 96a, paragraph 2, shall apply.

(3) It shall be indicated in the new specification that the patent may no longer be opposed.

(4) Article 96b shall apply.

- 19 -

Article 104

Certificate for a European patent

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Note on Articles 94 - 104

If any opposition is raised, or if the time limit for raising opposition has expired without any notice of opposition being given, a reference to this should be made in the Patent Bulletin. A corresponding provision will have to be included in the Implementing Regulations.

BR/GT I/32 e/69 aem

General observations

(1) Several provisions will have to be inserted or amended in order to take the new system into account, in particular as regards :

- surrender (old Article 124 of the 1965 Draft),
- lapse (old Articles 125 or 126),
- the retrospective effect of revocation, etc.,
- the plurality of proprietors for different countries.

(2) It will be necessary to study whether there should be some limitation of the possibility of engaging in national revocation actions on a European Patent or of deciding such actions until the time limit for oppositions has expired or a final decision in an opposition has been given.

It could also be studied whether a defendant in an infringement action could be joined in opposition proceedings, even if the time limit laid down in Article 96c has expired.