

# **BR/GT I/33 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/33 e/69

- Secretariat -

WORKING PARTY I

WORKING DOCUMENT

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

Articles 15, 16, 24a, 25, 26 to 28 and 30,  
29, 73, 88 and 88a

(Text drawnup by the Drafting Committee)

PART VI

RENEWAL OF EUROPEAN PATENT APPLICATION AND EUROPEAN PATENTS

Note :

Since patents resulting from the European procedure are national patents for the countries which have not concluded a special agreement pursuant to Article 8a, or unitary patents for the countries parties to such an agreement, the Working Party considered that, as against what has been proposed for fees imposed prior to the grant of the European patent, the annual fees levied subsequent to such grant should be paid, as the case may be, either to the national offices under the national provisions governing national patents, or to the competent body under, and pursuant to the provisions of, the agreement provided for in Article 8a, for unitary patents.

The Working Party considers that the European Patent Office could not be financed solely by the fees charged for granting patents, unless these fees were fixed at a prohibitive level. The Working Party therefore considers that the annual fees levied for patents issuing from the European procedure should contribute, on a scale to be determined, to the financing of the European Office.

CHAPTER II  
RIGHT TO THE PATENT

Article 15

Right to the grant of a European patent

(1) The right to a European patent shall belong to the inventor or his successor in title. If the inventor is an employed person and if the national law governing a relationship between the employee and the employer grants the right to the patent to the employer, the right to the European patent shall belong to the latter or his successor in title. If several persons have made an invention independently of each other, the right to the European patents shall belong to the first person to file a patent application with the European Patent Office.

(2) For the purposes of proceedings before the European Patent Office, the person making the patent application shall be deemed to be entitled to exercise the right referred to in paragraph 1.

Article 16

Patent applications by persons not entitled to apply

(1) - deleted -

(2) - deleted -

(3) If a final decision has been given which recognises that a person referred to in Article 15, paragraph 1, other than the applicant, is entitled to the European patent, that person may, provided that the European patent has not yet been granted, file a new application in respect of the same invention within a period of three months following the final decision. In so far as the subject matter of the new application does not go beyond the description given in the original application, the new patent application shall be deemed to have been filed on the date of the earlier application and shall enjoy the right of priority where applicable. The original application for a European patent shall be deemed to be withdrawn once the new application has been filed.

(4) - deleted -

## CHAPTER V

### THE PATENT APPLICATION AS AN OBJECT OF PROPERTY

#### Article 24a

#### Unitary character of the European patent application

Subject to the provisions of any special agreement under Article 8a, the written patent application may be assigned or give rise to rights for one or several of the designated States. Such assignment shall not affect the unity of the application in proceedings before the European Patent Office. The assignees in the different States shall be regarded as joint applicants for the purpose of these proceedings.

Article 25

Assignment of a European patent application

(1) - deleted; see Article 24a -

(2) The assignment of a European patent application shall be made in writing and shall require the signature of the parties to the contract.

(3) The assignment shall be recorded in the Register of European Patents at the request of the interested party or of one of the interested parties on production either of the original or of a certified copy of the assignment deed, or of official documents verifying the assignment, or of such extracts from such deed or documents as suffice to establish the assignment. The request shall not be considered as made until such time as the fee prescribed for this purpose by the Regulations concerning fees made pursuant to this Convention has been paid.

(4) The European Patent Office shall retain one copy of the documents referred to in paragraph 3 and shall allow access to these documents on request, after the fee referred to in Article 162, paragraph 3, has been paid.

Article 25 (contd.)

(5) The assignment shall not have effect vis-à-vis the European Patent Office until after it has been recorded in the Register of European Patents. It shall only become effective to the extent to which it is verified by the documents referred to in paragraph 3.

(6) - deleted -

Note :

Provisions must be made to inform the European Patent Office of any change of ownership of the European patent during the opposition period or during opposition proceedings.

Articles 26 to 28a and 30

Note :

The necessity for these Articles, and if so the appropriate texts, will be considered later.

Article 29

Contractual licensing of a European patent application

(1) A European patent application may be licensed for the whole or part of the territories of the designated Contracting States.

Note :

The necessity of paragraph 1 will be considered later.

(2) Paragraphs 3 and 4 of Article 25 shall apply to the grant or the assignment of a licence in respect of a European patent application.

Article 73

Effect of priority right

The right of priority shall have the effect that the date of the first filing shall count as :

- (a) the date of filing the application for a European patent for the purposes of Article 11, paragraphs 2 and 3 and Article 15, paragraph 1.
- (b) - deleted -

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 two five 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.

Article 88 (contd.)

(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 be withdrawn.

Notes on Article 88

1. One delegation expressed its preference for a system of prior examination, or, failing this, for providing for the possibility of the Administrative Council deciding that the request for examination can be deferred in so far as the circumstances make this necessary.

Note on paragraph 2

2. The Working Party considers that if the period referred to in paragraph 2 were to be long, it would be necessary to study the desirability of laying down procedures enabling third parties to introduce a request for examination on payment of a part only of the examination fee.

Article 88a (new)

Modification of the procedure by the Administrative  
Council

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

Note :

The Working Party considers that this paragraph should be re-examined after the period laid down in Article 88, paragraph 2, has been fixed.

(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.