

BR/GT I/40 e/70

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

Brussels, 10 April 1970
BR/GT I/40/70

- Secretariat -

WORKING PARTY I

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

GUIDELINES FOR FINANCIAL PLANNING FOR
THE EUROPEAN PATENT OFFICE

RECOMMENDATIONS MADE BY WORKING PARTY I TO WORKING PARTY IV
AS DRAWN UP AT THE MEETING HELD AT
LUXEMBOURG ON 1 TO 3 APRIL 1970

BR/GT I/40 e/70 mrk

INTRODUCTORY NOTE

The following recommendations have been drawn up by Working Party I on the basis of a Paper prepared by its Chairman. This Paper and the annexes thereto, which had been distributed in three separate parts, are reproduced in a new document, BR/GT I/39/70. Working Party I agreed that the latter document should be forwarded to Working Party IV, together with the present recommendations. In addition, the amendments made to Annex 2 to the above Paper (Calculation of the number of examiners required) as a result of the discussion in Working Party I, are given in Annex 15 of these recommendations.

- 1 -

I. 1. Number of applications expected to be filed with the European Patent Office

On the assumption that the EPO will commence its activity in 1975 for all areas of technology, and recalling that it will still be possible to obtain national patents by means of the national procedures, Working Party I estimates, on the basis of the "three States theory", which leads to a conservative evaluation, that

40,000 applications

may be expected in that year. The Working Party considers that this would be a minimum figure.

2. Number of examiners required to process these applications

A. (a) On the assumption that a request for examination may be made within a period of 7 years from the filing of the application, Working Party I estimates that, out of 100 applications:

- 52 will give rise to a request for examination and
- 10 will give rise to opposition proceedings.

(b) On the assumption that the period referred to under (a) is 2 years, out of 100 applications:

- 72 would give rise to a request for examination and
- 14 would give rise to opposition proceedings.

B. On the basis of the working times required for each of the various operations in the procedure for grant, the number of examiners would be as follows:

- for case A (a) : 390 examiners
- for case A (b) : 534 examiners

These two figures have been obtained by increasing the figures given in Annex 2, page 3, as amended, by 7 % as a safety measure.

II. Total number and grading of European Patent Office staff

1. On the assumption of deferred examination with a 7-year request period, the total staff of the EPO would be 1,320 persons, distributed as in Annex 3, i.e.:

562 employees in Class A

142 employees in Class B

475 employees in Class C

141 employees in Class D

2. Working Party IV is to calculate the total number and grading of EPO staff for the case of deferred examination with a 2-year request period, taking into account the contents of Annex 3, and on the basis of an additional 144 examiners.

III. Publication expenses of the European Patent Office

Working Party IV should assume that:

1. The cost of printing patent specifications will be completely covered by the publication fees and by the sale of the said specifications.
2. The cost of publishing the Official Journal and the European Patent Bulletin will be completely covered by the proceeds of the sale of the said publications.

IV. Procedural fees and renewal fees

1. Working Party IV should draw up tables, particularly corresponding to those in Annexes 14, 17 and 18, on the assumption of deferred examination with a 2-year request period.
2. As regards renewal fees, Working Party IV should take the figures in Annex 16 as the basis for its calculations, stopping at year 10. The question whether renewal fees should be progressive or fixed after year 10 remains open. There would seem to be no point, at the present stage, in forecasting income from renewal fees after year 10, in view of their negligible amount. The attention of Working Party IV is drawn to the fact that the figures given in Annexes 17 and 18 include applications for patents of addition which do not give rise to the payment of renewal fees.

V. Designation fees

1. Working Party IV should consider that:
 - designation fees would constitute direct revenue of the EPO;
 - the designation fee will be \$ 12 for each State designated (the figure envisaged in the PCT draft). The question whether only one designation fee, or six designation fees, are to be levied for the six Member States of the EEC under the second Convention, is still open.

In addition, in order to simplify matters, Working Party IV should not take into account any effects of designation fees levied under the PCT.

2. When evaluating the revenue from designation fees on the basis of the figures given in Annex 23, Working Party IV is asked to assume that each European patent application will, on average, give rise to the designation of three States, the Member States of the EEC being regarded as a single designated State. If it is later agreed that separate designation fees should be paid for each of the six States, the above average figure of three designations per application should be raised to 7.6. Working Party IV could also work out the financial consequences of the latter possibility.

VI. Opening of the European Patent Office

Working Party IV should examine the revenue and expenditure of the EPO for the two following cases:

- immediate opening of the EPO in all areas of technology (Annex 20);
- progressive extension of its activities according to the phasing set out in Annex 21.

VII. Partial financing of the European Patent Office by a share in the renewal fees levied by the national offices

Working Party IV should in particular study:

- the system proposed in Annex 25 which provides for a 75 % share of the proceeds from renewal fees levied by the national offices on European patents, on the understanding that for any State the share should read a minimum amount still to be fixed, this amount being levied even in the event of the renewal fees being abolished in that State;
- a system under which the contributions on account of national renewal fees would be fixed for each year and for each State according to criteria to be determined.

VIII. Search fee

Working Party IV should examine if and how the search fee could be made less than the IIB's charge for providing the search report. This result could be obtained by a suitable increase:

- either of the other fees charged before the granting of the European patent;
- or of the payments to be made by the national offices on account of the renewal fees for granted European patents.

The Working Party could if it wishes, envisage a combination of these methods.

IX. Choice of a key for the advances to be made by States and their reimbursement

Working Party IV should include from its consideration any key which does not take account solely of the relative importance of the States' activity in the patents field.

Working Party IV is recommended to adopt a key based on the total number of patent applications filed in each State during the second year prior to the date of opening of the EPO (cf. Annex 23, column 6), it being understood that this key may not be amended.

X. General recommendation

In general, and subject to the above suggestions, Working Party IV should take into consideration all the documents and annexes submitted to it.

It would be desirable that Working Party IV should examine, for certain annexes which only concern the case of deferred examination with a 7-year request period, the financial consequences of deferred examination with a 2-year period.

Amended

Calculation of the number of examiners required

On the basis of the 1962 Draft	On the basis of the 1970 Draft	
I. Out of 100 patent applications		
	under a system of deferred examination with a 7-year request period	under a system of deferred examination with a 2-year request period
80 lead to a provisional European patent; according to the 1963 Report (p. 12 below) 35 % of these are abandoned before request for examination is made; thus under deferred examination, 28 applications would be dropped, leaving	80 applications are neither withdrawn or refused during examination for obvious deficiencies nor abandoned following an unfavourable report on the state of the art; with a request period of about the same length as for 1962, about 28 applications would be dropped, leaving	80 applications reach the stage indicated in the previous column; as the result of a considerably shorter request period than for 1962, only 10 % would be dropped before a request for examination was made; the drop-out figure is thus reduced to 8, leaving
52 leading to a request for examination, of which 17 are eliminated in examination proceedings with third party participation, leaving	52 leading to a request for examination, of which 12 are eliminated in examination proceedings without third party participation, leaving	72 leading to a request for examination of which 17 are eliminated leaving
35 leading to a final European patent	40 leading to the grant of a European patent, of which 10 give rise to opposition; of these, 5 are eliminated, leaving	55 leading to the grant of a European patent, of which 14 give rise to opposition; of these, 7 are eliminated, leaving
	35 valid European patents	48 valid European patents

II. This leads to the following amount
of work for 100 applications

1962 Draft		1970 Draft	
		7 year period	2 year period
1. 100 examinations for obvious deficiencies		1. 100 examinations for obvious deficiencies	1. 100 examinations for obvious deficiencies
2. 52 examinations for novelty		2. 52 examinations for novelty	2. 72 examinations for novelty
		3. 10 examinations of opposition	3. 14 examinations of opposition

Examiner's time required at each operation for this volume of work:

according to 1963 Report (p. 17):

1. 0.5 working days for examination for obvious deficiencies
2. 3.0 working days for examination for novelty
of which
2.3 days by the 1st rapporteur
0.7 days by the 2nd rapporteur

according to new estimates:

1. 0.1 working days for examination for obvious deficiencies
2. 2.7 working days for examination for novelty-total
for all the examiners concerned
3. 5 working days for examination of opposition-total
for all the examiners concerned

III. Thus the following number of examiners are required:

1962 Draft		1970 Draft	
		7-year period	2-year period
1. $100 \times 0.5 = 50$ days		1. $100 \times 0.1 = 10$ days	1. $100 \times 0.1 = 10$ days
2. $52 \times 3 = 156$ days		2. $52 \times 2.7 = 140.4$ days	2. $72 \times 2.4 = 194.4$ days
		3. $10 \times 5 = 50$ days	3. $14 \times 5 = 70$ days
100 applica- tions re- quire	206 examiner working days	200.4 examiner working days	274.4 examiner working days

on the basis of 220 working days per year
per examiner, processing 100 applications
calls for about

0.94 examiners

0.91 examiners

1.25 examiners

this corresponds to an annual workload per examiner of

106.80 applications

109.89 applications

80 applications

for 40,000 applications, the number of examiners
required would be:

375

364

499

which, rounded up by about 7 %, gives

400 examiners

390 examiners

534 examiners

