

BR/GT I/46 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, 1 July 1970

BR/GT I/46/70

- Secretariat -

A d d e n d u m

to Working Document BR/GT I/10/69 of 12 August 1969
for a Draft Convention for a European System for the Grant of Patents
put forward by the Chairman of Working Party I

Articles 153 - 217

BR/GT I/46 e/70 rti/RT/cm

Introduction

This addendum supplements the Chairman's Working Document BR/GT I/10/69 dated 12 August 1969, only part of which was discussed during the 3rd Working Meeting of 24/28 November 1969, by presenting a few comments on the proposals it contained on Articles 153 to 173 and 180, and by putting forward proposals on Articles 174 to 179 and 181 to 217, examination of which had been deferred in that document.

The Articles referred to bear the old numbers of the 1962/65 Preliminary Drafts. Where these Articles refer to Articles of the 1970 First Preliminary Draft, however, the new numbering of the 1970 First Preliminary Draft has been used.

K E Y

1962 Draft	indicates the Draft Convention relating to a European Patent Law, drawn up by the EEC "Patents" Working Party, and published in 1962.
1965 Draft	indicates the 1962 Draft, updated to take into account the amendments contained in the EEC "Patents" Working Party's working document 2335/IV/65 of 22 January 1965.
First Preliminary Draft	indicates the First Preliminary Draft of a Convention Establishing a European System for the Grant of Patents .

+ in the column headed "Chairman's
proposal"

indicates that the text on the left-hand
page is adopted without amendment.

--- under the text in the column headed
"1962 Draft"

indicates that the text thus underlined
has been deleted in the column headed
"Chairman's proposal"

— under the text in the column headed
"Chairman's proposal"

indicates that the text thus underlined is
new in relation to the 1962 Draft. Completely
new paragraphs, however, have not been
underlined.

Articles 153 to 173

Common procedural provisions of the European Patent Office

Note:

The Chairman would point out that the proposals for Articles 153 to 173 contained in Working Document BR/GT I/10/69 should be examined with due regard to the following amendments:-

1. The references in these Articles to other Articles should be brought into line with the new numbering of the First Preliminary Draft.
2. Article 158a should be extended to cover opposition proceedings.
3. In accordance with the Swedish delegation's proposal of 20 November 1969 (BR/GT I/25/69); Article 162 should be supplemented by a paragraph 4 which could be worded as follows:-
 - (4) The provisions of paragraph 1 shall not prevent the European Patent Office from communicating the following bibliographic data to third parties, or from publishing such data:
 - (a) Number of the European patent application;
 - (b) Date of filing of the European patent application;
 - (c) Name of applicant;
 - (d) Description of the invention;
 - (e) Contracting States designated in accordance with Article 67;
 - /(f) Classification code of the European patent application.7

In the Chairman's view, disclosure of the information referred to under (e) is permissible according to Article 30 (2b) of the final version of the PCT as regards regional patent offices. However, the information referred to under (f) is shown in brackets because it is not mentioned in Article 30 (2b) of the final version of the PCT.

The amendment to Article 60 (a) /51(a)7 of the First Preliminary Draft proposed by the Swedish delegation in connection with the addition of a paragraph 4 to Article 162 can probably be dispensed with if all the data mentioned in Article 162 (4) are entered in the Register of European Patents as should be provided for by the Implementing Regulations to Article 59 (60).

4. Article 164, paragraphs 1 and 2, should be extended to cover opposition proceedings.
5. Because of the introduction of belated opposition, Article 172 (2) second sentence, of the 1965 Draft should be included in the First Preliminary Draft, subject to the words "Upon conclusion of the proceedings" be replaced by the words "During the opposition period and, if necessary, up to the conclusion of opposition proceedings".
6. Article 173: the Implementing Regulations should ensure that the European Patent Office is empowered to require special authorisations.

PART X

PROCEDURE IN INFRINGEMENT AND OTHER CIVIL PROCEEDINGS

Articles 174 to 184

Note:

The proposal made by the Chairman in working document BR/GT I/10/69 as regards these Articles is maintained.

PART XI

TRANSITIONAL PROVISIONS

CHAPTER I

TRANSITIONAL AND GENERAL PROVISIONS

Article 185

Meetings of the Administrative Council

Note:

The drafting of this provision comes within the competence of Working Party II.

Progressive expansion of the field of activity of the European Patent Office

1962 Draft

(1) Applications for European patents shall not be accepted before the day on which the European Patent Office opens. To begin with, the acceptance of patent applications shall be restricted to certain technical fields subsequently to be progressively extended to other fields.

(2) The date of the opening of the European Patent Office and the technical fields for which applications for European patents will be accepted shall be fixed by the Administrative Council on the recommendation of the President of the European Patent Office.

(3) The technical fields for which applications for European patents will be accepted shall be fixed with reference to the International Classification referred to in Article 62.

Progressive expansion of the field of activity of the European Patent Office

Chairman's proposal

(1) Applications for European patents may be filed from the day the European Patent Office opens. The processing of patent applications may to begin with be restricted to certain areas of technology and subsequently be progressively extended to other areas.

(2) The date of the opening of the European Patent Office and the areas of technology for which applications for European patents may be processed shall be fixed by the Administrative Council on the recommendation of the President of the European Patent Office.

(3) - transferred to the Implementing Regulations -

(4) If a European patent application cannot be processed within three months from the day it has been filed, because it relates either wholly or in part to an area of technology not yet admissible, pursuant to paragraph 1, the European Patent Office shall inform the applicant accordingly that the application shall be deemed to have been withdrawn for this reason upon receipt of this notification, and shall advise him to proceed accordingly to Article 124. Any fees paid, with the exception of the filing fee, shall be refunded.

Notes:

1. The background to the proposed amendments is as follows: the "Patents" Working Party, at its last meeting in October 1964, decided to delete Articles 189 to 193 concerning joint filing for the grant of national patents and to provide in their place the possibility of converting such Patent applications, which may either wholly or partly concern an area of technology in which the European Patent Office does not yet examine (Minutes of the 15th meeting of the "Patents" Working Party, 7 December 1964, 11821/IV/64, pages 36 and 37). The Netherlands delegation, which had been asked to draw up the appropriate provisions (pp. 37 and 70 of the above Minutes), was unable to submit any recommendations because work on the 1965 Draft was suspended. The amendments proposed by the Chairman, and in particular the newly proposed paragraph 4, represent an attempt to give effect to the earlier decisions.
2. The previous paragraph 3, suitably adapted, should be included in the Implementing Regulations, since the provision concerning the patent classification to be adopted by the European Patent Office has also been transferred to the Implementing Regulations (cf. footnote 1 to Chapter IV, under Article 59 (60) of the First Preliminary Draft).

Article 187

First accounting period of the European Patent Office

Note:

The drafting of this provision comes within the competence of Working Party IV.

Preliminary national filing

1962 Preliminary Draft

(1) Each Contracting State may prescribe that persons ordinarily resident or having their registered place of business on its territory may not file an application for a European patent except where that application is based on one or more applications for national patents filed in the said State and constituting first filings within the meaning of Article 4 of the Paris Convention for the Protection of Industrial Property. This stipulation shall not apply to persons who, at the time of their first filing, were not ordinarily resident or did not have a registered place of business in the territory of that State.

(2) A Contracting State making use of the reservation referred to in paragraph 1, shall notify the European Patent Office accordingly.

(3) The application for a European patent may only relate to the invention which forms the subject of an application or applications for a national patent or patents.

(4) At the request of the European Patent Office, and within a period prescribed by the latter of at least four months after the date of filing of the application for a European patent, the application shall submit to the Office the documents referred to in Article 74, paragraph 2. If these documents are not submitted in due time, the Examining Section shall refuse the application for a European patent. Article 77, paragraphs 1, 3 and 4 shall apply correspondingly.

(5) If the provision laid down in paragraph 3 has not been complied with, Articles 100 and 127 shall apply to the confirmation of a provisional European patent and to the revocation of a final European patent.

Preliminary national filing

Chairman's proposal

(1) +

Note:

The Chairman would suggest considering whether this provision, originating from the 1962 Draft, should be retained or whether it might not be better to delete it.

(2) +

(3) +

(4) + (75; 78, paragraphs 2, 4 and 5)

(5) - deleted -

CHAPTER II
JOINT FILING FOR THE GRANT OF NATIONAL PATENTS
Articles 189 to 193

Note:

This group of Articles in the 1962 Draft was deleted by the "Patents" Working Party at their last meeting (cf. Note 1 to the Chairman's proposal on Article 186).

CHAPTER III
SIMULTANEOUS PROTECTION GIVEN
BY EUROPEAN AND NATIONAL PATENTS

Articles 194 to 205

Chairman's proposal

delete

Note:

As the question of simultaneous protection is a matter for the national laws of the Contracting States according to Article 6 of the First Preliminary Draft, it is unnecessary to include relevant provisions here.

PART XII
FINAL PROVISIONS

Article 206

Application to national utility models

1962 Draft

The provisions of this Convention which relate to applications for national patents filed and to national patents granted in the Contracting States, shall equally apply to national applications for utility models or to utility models deposited or registered in the Contracting States.

PART XII
FINAL PROVISIONS

Article 206
Application to national utility models

Chairman's recommendation

The provisions of this Convention which relate to applications for national patents filed and to national patents granted in the Contracting States, shall equally apply to applications for national utility models and to utility models deposited or registered in the Contracting States.

Note:

The proposed amendment is purely of an editorial nature.

Article 207Adaptation of national law to the European Patent Law

1962 Draft

(1) A European patent published on or after the priority date of an application for a national patent, but having an earlier priority date, shall be deemed in each of the Contracting States, in regard to such application or to the national patent granted in respect thereof, to be the equivalent of a national patent based on an earlier filing.

(2) If the law of a Contracting State provides for the grant of compulsory licences on earlier patents in favour of subsequent dependent patents, those provisions shall also apply in favour of European patents.

The European patent application as a prior national right

Chairman's proposal

(1) A European patent application published on or after the priority date of an application for a national patent, but having an earlier priority date, shall be deemed in each of the Contracting States, in regard to such national application or to the patent granted in respect thereof, to be the equivalent of a national patent application based on an earlier filing.

(2) - deleted -

Note:

The 1962/65 Drafts, which provided for a Community patent, dealt in Article 137 in particular with the grant of compulsory licences in respect of an earlier European patent in favour of a later national patent. Article 207 (2) of the 1962/65 Drafts was, according to the principle of reciprocity, to make provision for the reverse case, i.e. the grant of a compulsory licence in respect of an earlier national patent in favour of a later European patent (Minutes of the 5th meeting of the "Patents" Working Party, 22 May 1962, 3076/IV/62, page 72).

Corresponding provisions for the Community patent, as provided for in the First Preliminary Draft of the Second Convention, will be found in Articles 68 and 94 (3) of the latter.

In so far as the European patent granted on the basis of the 1st Convention is a bundle of patents, a provision similar to that of Article 207 (2) of the 1962/65 Drafts would seem superfluous, as the possibility of granting licences dependent on earlier national patents should exist under the terms of Article 2 (2) of the First Preliminary Draft. Should such a possibility not be afforded by the terms of Article 2 (2) of the First Preliminary Draft, it would probably be better suitably to amend Article 2 (2) rather than retain the provision of Article 207 (2) of the 1962/65 Drafts at this point

Articles 208 to 217

Note:

The drafting of these provisions comes within the competence of Working Party II.

