

BR/GT I/48 e/70

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Comment:

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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, 26 June 1970

- Secretariat -

"IMPLEMENTING REGULATIONS" SUB-COMMITTEE
OF WORKING PARTY I

WORKING DOCUMENT

PRELIMINARY DRAFT
FOR A CONVENTION RELATING TO THE ESTABLISHMENT OF A
EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

Article 17, Numbers 3 and 4
Article 21, Numbers 1, 2 and 3
Article 22, Number 1
Article 23, Number 1
Article 28, Numbers 1 and 2
Article 34, Numbers 1, 2, 3, 4 and 5

(Text drawn up by the Drafting Committee)

BR/GT I/48 e/70 sw

Re. Article 17

Number 3

Rectification or cancellation of the
designation of an inventor

(1) An incorrect designation of an inventor may not be rectified or annulled save upon request, accompanied by the consent of the wrongly designated person and, in the event of such request not being submitted by the applicant for a European patent, by the consent of the latter. In the absence of such consent, the claimant may produce a final decision.

(2) In the event of an incorrect mention of the inventor having been entered in the Register of European Patents or published in the European Patent Bulletin, such entry or such publication shall be rectified. The mention of an incorrect designation of the inventor shall be rectified in all publications of the European patent application not yet distributed. This provision shall apply to the annulment of an incorrect designation of the inventor.

Note :

See note 2 to Re. Article 17, No. 1

Re. Article 17

Number 4

Responsibility as regards the designation of the inventor

- deleted -

BR/GT I/48 e/70 sw

Re. Article 21
(former Article 24)

Number 1

Prohibition of conversion of an application
for an independent patent

A European patent application which was not designated as an application for a patent of addition at the time of filing may not be converted into an application for a patent of addition.

Re. Article 21

(former Article 24)

Number 2

Dependency of a European patent of addition
upon the parent patent

A European patent of addition may only be dependent upon one single European parent patent; it may not be dependent upon a patent of addition.

Re. Article 21

Number 3 (new)

Grant of a patent of addition where the parent patent has been assigned to different persons in different countries

Note :

Provisions will have to be drafted at a later stage to meet the situation envisaged in the Note on Article 21 (3) of the First Preliminary Draft.

Re. Article 22

Number 1 (new)

Procedure in the event of a European patent application
being assigned to different persons in different countries

Note :

It might be advisable to examine whether, in the
case mentioned above, it would be useful or necessary
to adopt implementing procedures for this provision
whereby the proprietors of rights in the various
States would be considered as joint applicants for
the purposes of proceedings for grant.

BR/GT I/48 e/70 sw

Re. Article 23
(former Article 25)

Number 1

Examination of a request for the recording
of an assignment

A request for the recording of an assignment in the Register of European Patents may be rejected only in the event of failure to comply with the conditions laid down in Article 23, paragraphs 1 and 2, first sentence, of the Convention.

Re. Article 28
(former Article 29)

Number 1

Recording and cancellation of an entry concerning the
grant or assignment of a licence

The provisions of Articles ... (Re. Article 23,
number 1, Re. Article 24, number ...,) shall apply to the
recording and to the cancellation of an entry in the Register
of European Patents concerning the grant or assignment of a
licence in respect of a European patent application.

Notes :

(1) The number referred to as Re. Article 24,
number ... corresponds to Re. Article 26, number 2 of
the 1964 Draft, which was worded as follows :

"The entry in the Register of European Patents of
a mortgage of a European patent may be cancelled only
upon request supported either by documents establishing
that the mortgage has lapsed, or by a declaration
whereby the mortgagee consents to the cancellation of
the entry. A request for the cancellation of an
entry shall not be considered as made until the fee
prescribed by the Rules relating to fees adopted
pursuant to this Convention has been paid."

Since the question of whether provisions on the
mortgaging of a European patent application should
be included in the Convention has not yet been
tackled, it will, if the reply is in the negative, be
expedient to incorporate the above-mentioned provisions
into this Number, adapting them to the case of
licensing.

(2) When, at a later date, a study is made of which Convention provisions are to be incorporated into the Implementing Regulations and vice versa, account will have to be taken of the fact that the fee payable in respect of the request for the recording of an entry concerning the grant or assignment of a licence is provided for in the First Preliminary Draft (Article 28 (2), which refers to Article 23 (2), second sentence), while provision is made in the Implementing Regulations for the fee payable in respect of the request for the cancellation of an entry of the same acts (Re. Article 28, number 1, which¹/₄ refers to Re. Article 24, number ...).

Re. Article 28

(former Article 29)

Number 2

Special indications for the recording of a licence

(1) A licence in respect of a European patent application shall be recorded in the Register of European Patents as an exclusive licence if the applicant and the licensee so require.

(2) A licence in respect of a European patent application shall be recorded in the Register of European Patents as a sub-licence where it is granted by a licensee whose licence is recorded in the said Register.

Re. Article 34

Number 1

Legal authenticity and time limit for the filing of
a translation of the application

(1) For the purposes of the application of the provisions of the Convention and of these Implementing Regulations, the translation referred to in Article 34, paragraph 2, of the Convention shall take the place of the original text of the European patent application, save in respect of the determination of the extent of the protection applied for.

(2) Saving proof to the contrary, the European Patent Office may, for the purposes of determining the extent of the protection applied for, deem the translation referred to in Article 34, paragraph 2, of the Convention to be in conformity with the original text of the European patent application.

(3) The translation referred to in Article 34, paragraph 2, of the Convention must be submitted within a period of 3 months as from the filing of the application, but not later than 13 months after the priority date.

Re. Article 34

Number 2

Reduction of fees

The persons referred to in Article 34, paragraph 2, of the Convention shall enjoy a reduction in the fees payable by them under Articles of the Convention, to the extent that they avail themselves of the options allowed by the provisions of Article 34, paragraph 2, and paragraph 3, second sentence. This reduction shall be fixed at a percentage of the total of such fees by the Rules relating to fees adopted pursuant to the Convention.

Note :

The decision as to which Articles are to make provision for the reduction in fees referred to above will be studied at a later date. The percentage of this reduction will be laid down at the same time as the amount of the fees.

BR/GT I/48 e/70 sw

Re. Article 34

Number 3

Use of the language of the proceedings

Saving any provisions to the contrary in these Implementing Regulations, the language of the proceedings shall be used in particular in the notifications and decisions of the European Patent Office and in the documents produced by parties to the proceedings as well as in oral proceedings before the European Patent Office.

Re. Article 34

Number 4

Exceptions to the language of the proceedings
in written proceedings

(1) Third parties who make opposition to the European patent may submit unsworn written statements or, in the event of the application of Article 34, paragraph 3, second sentence, of the Convention, a translation thereof, in a language referred to in Article 34, paragraph 1 of the Convention, other than that of the proceedings.

(2) If the translation referred to in Article 34, paragraph 3, second sentence, of the Convention, and in paragraph 1 of this Article, is not produced within a period of 1 month as from the date of filing of the statement, the statement shall not be taken into consideration.

(3) Documents other than those referred to in paragraphs 1 and 2, and used for purposes of evidence before the European Patent Office, and in particular publications, may be submitted in any language. The European Patent Office may, however, require that a translation be produced, within a given time limit, in one of the languages referred to in Article 34, paragraph 1, of the Convention, accompanied, where necessary, by an official document certifying that it is identical to the original text. In the event of the translation or official certificate not being submitted in good time, the document shall not be taken into consideration.

Re. Article 34

Number 5

Derogations from the use of the language of the
proceedings in oral proceedings

(1) Any party to oral proceedings before the European Patent Office may, in lieu of the language of the proceedings, use one of the other languages referred to in Article 34, paragraph 1, of the Convention, on condition either that such party gives notice to the European Patent Office at least two weeks before the date laid down for the hearing, or makes provision for interpreting into the language of the proceedings. Any party may likewise use one of the languages referred to in Article 34, paragraph 2, of the Convention, on condition that he makes provision for interpretation into the language of the proceedings. The European Patent Office may permit derogations from the provisions of this paragraph.

(2) In the course of oral proceedings, the officials of the European Patent Office may, in lieu of the language of the proceedings, use one of the other languages referred to in Article 34, paragraph 1, of the Convention.

Re. Article 34, Number 5

(3) In the event of witnesses or experts being unable to express themselves adequately in one of the languages referred to in Article 34, paragraphs 1 and 2, of the Convention, they may use another language. Should a preliminary investigation be decided upon following a request by a party to the proceedings, witnesses and experts who express themselves in languages other than those referred to in Article 34, paragraph 1, of the Convention, may be heard only if the party in question makes provision for interpretation into the language of the proceedings; the European Patent Office may, however, authorise interpretation into one of the other languages referred to in Article 34, paragraph 1, of the Convention.

Note :

Paragraph 3 will be reconsidered after the Working Party has examined the relevant Articles of the Convention.

(4) If the parties and the European Patent Office agree, any language may be used in oral proceedings.

(5) The European Patent Office shall, where appropriate, make provision at its own expense for interpretation into the language of the proceedings or if necessary, into the other languages referred to in Article 34 paragraph 1, unless this interpretation is the responsibility of one of the parties to the proceedings.

Re. Article 34, Number 5

(6) Statements by officials of the European Patent Office, by parties to the proceedings and by witnesses and experts, made in one of the languages referred to in Article 34, paragraph 1, of the Convention during oral proceedings shall be entered in the minutes in the language employed. Statements made in any other language shall be entered in the language of the proceedings. Amendments to the text of the description or claims of a European patent application or European patent shall be entered in the minutes in the language of the proceedings.
