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Travaux Préparatoires EPC 1973

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, 9 September 1970
BR/GT I/55/70

- Secretariat -

WORKING PARTY I

WORKING DOCUMENT

PRELIMINARY DRAFT

CONVENTION FOR A
EUROPEAN SYSTEM FOR THE GRANT OF PATENTS

Articles 154, 155, 156, 157, 158, 158a, 159, 160, 161, 162,
163, 164, 165, 166, 167, 168, 169,
170 and 171

(Text drawn up by the Drafting Committee)

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Article 154

Investigation

(1) In any proceedings before an Examining Division or a Board of Appeal, evidence may be furnished at the instance of the parties to the proceedings by any of the following means:-

- (a) the personal appearance of the parties;
- (b) requests for information and the production of documents;
- (c) the examination of witnesses;
- (d) expert opinions;
- (e) inspection.

(2) The Examining Division or Board of Appeal may commission one of its members to examine the evidence adduced in accordance with paragraph 1.

(3) A Board of Appeal or any member duly commissioned by it to examine evidence may hear witnesses and experts on oath, in so far as this is considered necessary.

(4) A Board of Appeal may impose a fine not exceeding on any witness who fails to appear after service of a summons on him in proper form. A similar penalty may be imposed upon any witness who, without proper reason, refuses to testify or take an oath. The fine may be waived if the witness offers a legitimate excuse.⁷

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Re. Article 154

/(5) Each Contracting State shall treat any perjury on the part of witnesses and experts as if the offence had been committed before one of its national courts dealing with civil proceedings. On notification by the President of the European Patent Office, it shall take proceedings before the competent national court against such persons.7

(6) Interested parties, witnesses and experts may be heard by the judicial authorities of their country of residence. Witnesses and experts may be heard, under oath, by the judicial authorities of their country of residence, even when the hearing has been requested by an Examining Section or Examining Division.

Note

This Article is to be re-examined later with government legal experts.

Article 155

Time limits

When this Convention specifies a period to be determined by the European Patent Office, such period shall not be less than two months or more than four months. In certain special cases, the period may be extended upon request, presented before its expiration.

Article 156

Observation of time limit prevented by force majeure

(1) The applicant who is prevented by force majeure from observing a time limit imposed by the European Patent Office shall, upon application, have his rights re-established if the non-observance in question has the direct consequence, by virtue of the provisions of this Convention, of causing the refusal of the European patent application, or of a request, or the deeming of the European patent application to have been withdrawn, or the loss of any other right or means of redress.

(2) The application must be submitted within two months from the removal of the cause of non-compliance with the time limit. The omitted act must be completed within this period. The application shall only be admissible within the year immediately following the expiration of the unobserved time limit. In the case of non-payment of a renewal fee, the period specified in Article 120, paragraph 2, shall be deducted from the period of one year.

(3) The application must state the grounds on which it is based, and must set out the facts on which it relies.

(4) The authority competent to decide on the omitted act shall decide upon the application. Any decision refusing an application must set out the grounds upon which it is based.

(5) The provisions of the present Article shall not be applicable to the time limits specified in Article 66, paragraphs 3 and 4, Article 72, paragraph 1, Article 75, paragraph 1, Article 81, paragraphs 4 and 5, and Article 88 paragraph 2.

Re. Article 156

(6) Any person who, in a Contracting State, has in good faith exploited or made effective and serious preparations for exploiting an invention which is the subject of a published European patent application in the course of the period between the refusal of that European patent application or the date from which the European patent application has been deemed to have been withdrawn and notification of re-establishment of the applicant's rights, may freely continue such exploitation in the course of his business or for the needs thereof.

Article 157

Death of applicant or proprietor

(1) If the applicant dies, and if his heirs cannot be located, the European Patent Office may, after a period of six months from his death, by public notice invite the heirs to establish, within a reasonable time, their rights in respect of the European patent application.

(2) If no person establishes a right of succession within the due time, or if persons who have laid claim to the rights within such time fail to produce proof within a reasonable period, the European patent application shall be deemed to have been withdrawn.

Note

This Article is to be re-examined later with government legal experts.

Article 158

Mentioning of the inventor as such

- deleted -

Article 158a

Approval of the form of the claims and of the patent

The European Patent Office shall consider and decide upon the application or the patent only in the text submitted to it, or agreed, by the applicant or patentee.

Article 159

Reference to general principles

In the absence of procedural provisions in this Convention, the European Patent Office shall take into account the principles of procedural law commonly recognized in the Contracting States. In the absence of such common principles the European Patent Office shall draw upon the legislation of one or more Contracting States.

Note

This Article is to be re-examined later with government legal experts.

CHAPTER II

ADMISSION OF PUBLIC, NOTIFICATIONS AND INSPECTION OF FILES

Article 160

Admission of public

(1) Hearings before the Examining Sections and Examining Divisions shall not be public.

(2) Oral proceedings, including delivery of the decision, shall be public, as regards the Boards of Appeal and the Enlarged Board of Appeal, after publication of the European patent application, and also in opposition proceedings, in so far as the body before which the proceedings are taking place does not decide otherwise in cases where admission of the public would have serious and unjustified disadvantages, in particular for a party to the proceedings.

Article 161

Notifications

The European Patent Office shall, as a matter of course, notify those concerned of decisions and summons, and of any notice or other communication from which a time limit is reckoned, or of which those concerned must be notified under the present Convention, or of which notification has been ordered by the President of the European Patent Office. Such notifications may, where exceptional circumstances so require, be given through the intermediary of the central industrial property offices of the Contracting States.

Article 162

Inspection of files

(1) The files relating to European patent applications, which have not yet been published pursuant to Article /86a/ or Article /96, paragraph 3/ shall not be made available for inspection without the consent of the applicant.

(2) Subsequent to the earliest of the publications provided for in Article /86a/ or Article /96, paragraph 3/ or in the case specified in Article 117, paragraph 2/ documents relating directly to the proceedings for grant of a European patent may be inspected by any third party on request.

(3) The inspection referred to in the preceding paragraphs shall be of the original documents or of copies thereof, and shall be subject to the payment of the fee prescribed by the Rules relating to fees adopted pursuant to this Convention.

(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 /67.7

Article 163

Information concerning national applications

(1) The applicant shall indicate, upon request of an Examining Division or of a Board of Appeal, and within a period to be determined by these, the States in which he has made applications for national patents for the whole or part of the invention which is the subject of the European patent application, and shall give the reference numbers of the said applications.

(2) If the applicant fails to submit an answer in response to a request under paragraph 1, the European patent application shall be refused.

CHAPTER III

COSTS AND THEIR ENFORCEMENT

Article 164

Costs in opposition proceedings

(1) Each party to opposition proceedings shall meet the costs he has incurred unless a decision of an Examining Division or Board of Appeal orders an equitable apportionment of costs incurred in hearing the parties or during a preliminary investigation.

(2) Apportionment of costs shall be dealt with in the decision on the opposition. Such apportionment shall only take into consideration the expenses, including the remuneration of the representatives of the parties, necessary to assure proper protection of the rights involved.

(3) Upon request, an Examining Section shall tax costs to be paid under a decision apportioning them. A bill of costs, with supporting evidence, shall be attached to the request. The request shall only be admissible if the decision in respect of which the taxing of costs is required is a final one. Costs may be taxed once their credibility is established.

Article 165

Costs in proceedings on appeal

Article 166

Costs in proceedings for the grant of compulsory licences

Article 167

Costs in revocation proceedings

Article 168

Costs in proceedings for a declaratory judgment

Article 169

Assistance

- deleted -

Article 170

Enforcement of costs and fines

(1) Decisions of the European Patent Office taxing costs of proceedings or imposing a fine are themselves enforceable; this provision shall not apply to States.

(2) Enforcement shall be regulated by the rules of civil procedure in the Contracting State in whose territory the enforcement takes place. The enforcement order shall be issued, without further requirement other than that of the authenticity of the document, by the national authority which the government of each of the Contracting States shall designate for this purpose, and of which the European Patent Office shall be informed.

(3) After the completion of these formalities at the request of the interested party, the latter may levy distraint by direct application to the competent authority in accordance with national law.

(4) - deleted -

Note:

This Article is to be re-examined later with government legal experts.

CHAPTER IV
REPRESENTATION

Article 171

Professional representation

(1) Representation of natural and legal persons in proceedings before the European Patent Office may, subject to the provisions of paragraph 5 below, only be undertaken by natural persons whose names appear in a list maintained for this purpose by the said Office.

(2) Any person having his registered place of business within the territory of one of the Contracting States and who, according to a certificate furnished by the central industrial property office of that State, is entitled to act as a professional patent agent before that office, may be entered in the list. Entry is effected upon request, accompanied by the certificate referred to above, which must specify the extent of such entitlement.

Note on paragraph 2 :

The French delegation will submit a supplementary proposal for examination by the Working Party.

(3) When, in a Contracting State, the qualification to act as an agent is not conditional upon the requirement of special professional qualifications, persons who act as agents before the central industrial property office of the said State must have habitually acted as such for at least five

Re. Article 171

years. In such cases, the certificate specified in the preceding paragraph must indicate that the applicant satisfies this requirement.

(4) Persons whose names are entered on the list referred to in paragraph 1 may only act before the European Patent Office to the extent that they are entitled, within the terms of the certificate referred to in paragraph 2, to act as patent agents in the Contracting State in which they exercise their profession.

(5) Representation before the European Patent Office may also be undertaken by any legal practitioner qualified in one of the Contracting States, and having his professional office within such State, to the extent that he is able, within the said State, to act as a representative in patent matters.

Notes :

(1) The State in which the European Patent Office is located will have to take the necessary steps, in good time, to enable representatives who are nationals of other Contracting States to establish a registered place of business in its own territory.

The Working Party will later draft a provision to this effect which must appear in the Convention.

(2) The provisions of this Article will be re-examined in the light of discussions with the interested circles.