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Comment:

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INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

12/1
Luxembourg, 11 September 1970

- Secretariat -

WORKING PARTY I

WORKING DOCUMENT

DRAFT CONVENTION
FOR A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

Articles 2, 20a, 22, 23, 24, 25, 26, 27, 28, 28a, 29,
133, 134, 171, 206 and 207

(Texts drawn up by the Drafting Committee)

Article 2

European patent

(1) no change from the First Preliminary Draft Convention,
1970

(2) The European patent shall, in each of the Contracting States for which it is granted, have the effect of and be subject to the same conditions as a national patent granted by that State, unless otherwise provided for by this Convention.

Article 20a new (23)

Term of the European patent

(1) The term of a European patent shall be 20 years as from the date of filing of the application or, in the case of a European patent of addition, from the date of filing the application for the parent patent.

(2) Nothing in the preceding paragraph shall limit the right of a Contracting State to extend the term of a European patent under the same conditions as those applying to its national patents, in order to take into account a state of war or similar emergency conditions affecting that State.

CHAPTER V

THE PATENT APPLICATION AS AN OBJECT OF PROPERTY

Article 22 (24a)

Unitary character of the European patent application

(1) The European 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.

(2) Where a group of Contracting States makes use of the powers conferred in Article 8, they may lay down that, in so far as they are designated, the European patent application may be assigned, mortgaged and subjected to distraint only in respect of all of these Contracting States and only in accordance with the provisions of the special agreement.

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Article 23

Assignment of a European patent application

no change from the First Preliminary Draft
Convention, 1970

Article 24 (26)

Mortgaging of a European patent application

Article 25 (27)

Other rights in rem with respect to a European patent application

Article 26 (28)

Distrainment of a European patent application

Article 27 (28a)

Continuing effect of rights in respect of
a European patent application

- deleted -

Article 28 (29)

Contractual licensing of a European patent application

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

Article 28a

Entry of licences and rights in respect of
a European patent application in the Register
of European Patents

Paragraphs 2 and 3 of Article 23 shall apply to the
grant or assignment of a licence, to the establishment or
assignment of a right in rem in respect of a European
patent application and to the distraint of such an
application.

Article 29 (30)

Supplementary application of national
law in legal transactions

(1) In so far as this Convention does not itself contain rules directly governing legal transactions concerning European patent applications, the law to be applied shall be the national law referred to by this Convention. Failing such reference, the law to be applied shall be that agreed upon by the parties, or, in the case of a transaction involving only one party, the law designated by such initiating party. In the event of failure to agree upon or to designate the relevant law, or if such agreement or designation cannot be enforced by the court before which the matter has been brought, the relevant law shall be determined in accordance with the rules of private international law applicable in the State of the court in question.

(2) If private international law refers to the *lex rei sitae*, the relevant law shall be the law of the Contracting State on whose territory the applicant is ordinarily resident or has his registered place of business. If the applicant is neither resident nor has his registered place of business on the territory of one of the Contracting States, the relevant law shall be the law of the Contracting State in which a representative has been appointed in accordance with the provisions of Article 172. If no representative has been appointed, the relevant law shall be the law of the Contracting State in which the European Patent Office is located.

Notes:

It remains to be examined whether it is also necessary to determine the applicable national law for the case of distraint of a European patent application.

PART NINE

REVOCATION OF THE EUROPEAN PATENT

Article 133 new (127)

Grounds for revocation

(1) Subject to the provisions of Article 134, a European patent may only be revoked under the law of a Contracting State, with effect for its territory, on the following grounds:-

- (a) if the subject matter of the patent is not patentable within the terms of Articles 9 to 14;
- (b) if the European patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art;
- (c) if the subject matter of the European patent extends beyond the content of the European patent application as filed;
- (d) if the protection conferred by the patent has, contrary to Article 104, been extended during opposition proceedings.

(2) If the grounds for revocation only affect the patent partially, revocation shall be pronounced in the form of a corresponding limitation of the said patent. If the national law so provides, the limitation may be effected in the form of an amendment to the claims, the description or the drawings.

Article 134 new

Prior national rights

If a national patent or application for a national patent has been made public on or after the priority date of a European patent in one of the Contracting States, and if the national patent or the application for a national patent has an earlier priority date than that of the European patent, the European patent shall, in that Contracting State, be treated, with regard to the prior national right, exactly as if it were a national patent.

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 on 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 who, according to a certificate furnished by the central industrial property office of that State, is entitled to act professionally as a representative in patent matters before that office, may be entered on the list. Entry shall be effected upon request, accompanied by the certificate referred to above, which must specify the extent of such entitlement.

(3) When, in any Contracting State, entitlement to act as a representative is not conditional upon the requirement of special professional qualifications, persons applying to be entered on the list who act as representatives in patent matters before the central industrial property office of the said State must have habitually acted as such for at least five years. Provided that, persons whose professional qualification to represent natural and legal persons in patent matters before the central industrial

Re. Article 171

property office of one of the Contracting States is officially recognised in accordance with the regulations laid down by such State shall not be subject to the condition of having exercised the profession. The certificate referred to in the preceding paragraph must indicate that the applicant satisfies one of the conditions referred to in the present paragraph.

(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 representatives in patent matters 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 registered place of business within such State, to the extent that he is able, within the said State, to act as a representative in patent matters.

Notes on Article 171 :

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.

PART TWELVE

FINAL PROVISIONS

Article 206

Application to national utility models

- deleted -

Article 207

The European patent application as
a prior national right

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 designated in the European patent application as published, 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.
