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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

Luxembourg, 17 September 1970
BR/GT I/60/70

"Implementing Regulations" Sub-Committee
of Working Party I

WORKING DOCUMENT

Article 62 No. 2 and No. 3, Article 63 No. 1,
Article 64 No. 1 and No. 2, Article 66 No. 1,
2 and 3.

(Text drawn up by the Drafting Committee)

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Re. Article 62
(Former Article 64)

Number 2

Communication of files to third parties by the Courts or
Public Prosecutors' Offices of Contracting States

(1) The Courts or Public Prosecutors' Offices of the Contracting States may, in the course of their proceedings, communicate to third parties the files concerning European patent applications or European patents transmitted to them by the European Patent Office. Such communications shall be effected in accordance with the conditions laid down in Article 162 of the Convention, with the exception that the payment of the fees provided for in paragraph 3 of that Article shall not be required.

(2) The European Patent Office shall, at the time of transmission to the Courts or Public Prosecutors' Offices of Contracting States, indicate such restrictions as may, under Article 162, paragraphs 1 and 2, of the Convention, be applicable to the communication to third parties of a European patent application or a European patent.

Re. Article 62
(Former Article 64)

Number 3

Expenditure in respect of communications between the European
Patent Office and the authorities of Contracting States

Expenditure in respect of each communication effected pursuant to Article 62 of the Convention shall be chargeable to the body making the communication.

Note:

This Article entails no derogation from the provisions of Article 180 of the Convention, which apply to the communication of technical opinions.

Re. Article 63
(Former Article 65)

Number 1

Procedure for letters rogatory

(1) Each Contracting State shall designate the national authority to which the European Patent Office is to address its letters rogatory and, subject to paragraphs 2 and 3, shall lay down the procedure to be applied in the carrying out of such requests.

(2) The European Patent Office shall draw up letters rogatory in the language of the Court in question or shall attach to such letters rogatory a translation into the language of the Court.

/(3) The provisions of Articles 11 to 14 and of Article 16 of the Hague Convention of 1 March 1954 on Civil Proceedings shall be applicable./

Notes:

1. It should be examined whether the Hague Convention has come into force for all the States taking part in the Inter-governmental Conference.
2. The attention of the representatives of the Ministries of Justice should be drawn to this Article.

Re. Article 64
(Former Article 66)

Number 1

Filing of European patent applications

European patent applications may be filed either
directly or by post. ..

Re. Article 64
(Former Article 66)

Number 2

Date of filing of documents concerning
European patent applications

(1) The authorities mentioned in Article 64, paragraph 1, of the Convention shall mark the documents referred to in Article 66, paragraph 1, of the Convention with the date of their receipt.

(2) These authorities shall issue without delay a receipt to the applicant which shall include at least the application number and the date marked in accordance with paragraph 1.

(3) The authorities mentioned in Article 64, paragraph 1(b), of the Convention shall without delay transmit to the European Patent Office either a copy of the receipt mentioned in paragraph 2 or an extract from this receipt which shall include at least the indications referred to in paragraph 2.

Re. Article 66
(Former Article 68)

Number 1

Form and content of the request for grant of a patent

(1) The request for grant of a European patent shall be submitted on a form drawn up by the European Patent Office. Printed forms shall be made available to applicants free of charge by the authorities referred to in Article 64, paragraph 1, of the Convention.

(2) The request shall contain:

- (a) a petition for the grant of a European patent;
- (b) the title of the invention, i.e. a precise and summary designation excluding all fancy names.
- (c) the name, address, nationality, of the applicant and the state in which his residence or registered office is located.

Names of natural persons shall be indicated by the person's family name and given name(s), the family name being indicated before the given name(s).

Names of legal entities, as well as companies considered to be legal entities by reason of the legislation to which they are subject, shall be indicated by their official designations.

Addresses shall be indicated in such a way as to satisfy the customary requirements for prompt postal delivery at the indicated address. They shall in any case comprise all the relevant administrative units, including the house number, if any. It is recommended that the telegraphic and teletype address and the telephone number be indicated.

- (d) if the applicant has appointed an agent his name and the address of his place of business under the conditions contained in paragraph (c);
- (e) where appropriate, indication that the application is directed towards obtaining a patent of addition or constitutes a divisional application - in such cases the request shall indicate the number of the patent application (or patent) to which the application in question refers;

Note:

The retention of the words in brackets would be justified only in the case where the Convention authorises division of the patent during opposition proceedings.

- (f) in cases covered by Article 16 of the Convention, the number of the earlier patent application;
- (g) where applicable, a declaration claiming the priority of an earlier application and indicating the date on which and the country in which the earlier application was filed;
- (h) designation of the Contracting State or States in which protection of the invention is requested;

(i) if there is more than one applicant, one of the applicants or agents shall be named in the request as common representative;7

Note on (i)

1. This provision will be reviewed when Article 173 of the Convention has been examined by the Representatives of the Ministries of Justice.
2. The provisions of PCT rule 4.8(b), according to which, if the request fails to comply with the terms of rule 4.8(a), the applicant first named in the request is considered the common representative, have been omitted here. Such a rule may, however, be prepared as one of the implementing provisions to the article corresponding to Article 161 of the 1965 Draft (notification).

(j) the signature of the applicant or his agent;

(k) a list of the documents submitted with the request. This list shall also indicate the number of sheets of the description, claims, drawings and abstract filed with the request.

Re. Article 66
(former Article 68)

Number 2

Content of the description

(1) The description shall first state the title of the invention as appearing in the request and shall:

- (a) specify the technical field to which the invention relates;
- (b) indicate the background art which, as far as known to the applicant, can be regarded as useful for understanding the invention, drawing up the report on the state of the art and for the examination; and, preferably, cite the documents reflecting such art;
- (c) disclose the invention, as claimed, in such terms that the technical problem (even if not expressly stated as such) and its solution can be understood, and state the advantageous effects, if any, of the invention with reference to the background art;
- (d) briefly describe the figures in the drawings, if any;
- (e) describe in detail at least one way of carrying out the invention claimed using examples where appropriate and referring to the drawings, if any;

(f) indicate explicitly, when it is not obvious from the description or nature of the invention, the way in which the invention is capable of exploitation in industry.

(2) The description shall be presented in the manner and order specified in paragraph 1, unless, because of the nature of the invention, a different manner or a different order would afford a better understanding and a more economic presentation.

Re. Article 66
(former Article 68)

Number 3

Form and contents of claims

(1) Claims shall be clear and concise.

Note:

It should be examined whether paragraph 1 should be transferred to the Convention.

(2) The definition of the matter for which protection is sought shall be in terms of the technical features of the invention. Wherever appropriate, claims shall contain:

- (a) a statement indicating the title of the invention and those technical features of the invention which are necessary for the definition of the claimed subject matter but which, in combination, are part of the prior art;
- (b) a characterising portion - preceded by the expression "characterised in that" or "characterised by" - stating the technical features which, in combination with the features stated in sub-paragraph (a), it is desired to protect.

(3) Any claim stating the essential features of an invention may be followed by one or more claims concerning particular embodiments of that invention.

(4)

7(a) Any claim which includes all the features of one or more other claims ("dependent claims") shall contain, if possible at the beginning, a reference to the other claim or claims and shall then state the additional features claimed. A dependent claim may only refer to more than one other claim in the form of an alternative ("multiple dependent claim"). No multiple dependent claim may be based on another multiple dependent claim.7

Note:

The Sub-Committee decided to postpone the discussion of the provision in sub-paragraph (a).

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