

BR/GT I/69 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.

- Secretariat -

"Implementing Regulations" sub-Committee
of Working Party I

WORKING DOCUMENT

Articles 85, Number 1
88, Number 1, 2 and 3
97, Number 1
99, Number 1
111, Number 1
112, Number 1
113, Number 1 and 2

(Text drawn up by the Drafting Committee)

Re. Article 85

(former Article 86a)

Number 1

Publication of European patent applications
and of the specification of a European patent

The President of the European Patent Office shall prescribe the form of the publication of the European Patent application and of the specification of a European patent and the data which they are to include.

Note :

This Article replaces Re. Article 85, Number 1 in BR/50/70, page 35, and also covers Article 98 and 107 of the First Preliminary Draft. This Article is only provisionally attached to Article 85.

Re. Article 88

No. 1

Form of the Request for Examination

(1) A request for the examination of a European patent application must be submitted in writing.

(2) The request shall contain:

- (a) the name and address of the person making the request in accordance with the provisions of Article ... (Re. Article 66, No. 1), paragraph 2 (c);

Note :

Paragraph 2 (a) does not mention the nationality or the State in which the residence or registered office of the person making the request is located. This provision is based on the principle that in accordance with Article 172, paragraph 3, first sentence of the Convention, provision should be made in the Implementing Regulations that a third party making a request for examination who does not have either a registered place of business or a residence within the territory of one of the Contracting States will not be compelled to be represented before the European Patent Office.

- (b) the file number of the European patent application to which the request refers and the name of the applicant and title of the invention
- (c) if the person making the request has appointed an agent, his name and the address of his place of business in accordance with the provisions of Article ... (Re. Article 66, No. 1), paragraph 2 (c).

Re. Article 88

No. 2

Refusal of a Request for Examination

(1) Should the European Patent Office find that a request for examination does not comply with the conditions laid down in Article ... (Re. Article 88, No. 1), it shall so inform the person making the request and shall invite him to remedy such deficiencies as may have been noted, within a time-limit to be fixed by the European Patent Office.

(2) In the event of failure duly to correct the deficiencies noted, the European Patent Office shall refuse the request for examination.

Re. Article 88

No. 3

Continuation of the procedure for grant where a request made
by a third party is invalid

(1) In the event of a request for examination being submitted by a third party who, at the time of submission, was incapacitated and in the event of the European Patent Office noting that the request is invalid for that reason once the examination of the European patent application has begun, grant proceedings shall be continued ex officio. Such procedural steps as may already have been taken shall be deemed to be fully valid.

(2) In the event of a request for examination submitted by a third party under the circumstances referred to in paragraph 1 having been notified to the applicant or published in the European Patent Bulletin before the expiry of the period laid down in Article 88, paragraph 2 of the Convention, and should the European Patent Office note the invalidity of the request before the opening of the examination of the European patent application, the said Office shall so notify the applicant. In the event of his being notified later than 2 months before the expiry of the above-mentioned period, the applicant may, notwithstanding Article 88, paragraph 2 of the Convention, submit a request for examination within a period of two months following the notification. This request shall be deemed to have been submitted on the date of the previous request; such procedural measures as may already have taken place shall be deemed to be fully valid.

Re. Article 97

(former Article 102 No. 1)

No. 1

The following note has been attached to Article 97 for the sake of convenience:

Note :

The sub-Committee has noted that the Convention lacks a provision concerning hearings in proceedings for grant. It feels that either the Convention should contain such a provision or all the provisions in the Convention which refer to hearings and oral proceedings should be grouped together in one general provision. For the latter case, the sub-Committee envisaged including the following provision in the Implementing Regulation:

"If a party who has been duly summoned to a hearing or to oral proceedings before the European Patent Office does not appear as summoned, the proceedings may continue without that party being heard."

Re. Article 99
(former Article 96a)

Certification of Copies of the European Patent Certificate

The proprietor of a European patent may obtain duplicate copies of the European patent certificate upon payment of the fee laid down by the Rules relating to fees adopted pursuant to the Convention.

Re. Article 111
(former Article 108)

No. 1

Content of the appeal

The appeal shall contain:

- (a) the name and address of the appellant in accordance with Article ... (Re. Article 66 No. 1) paragraph 2 (c)
- (b) a statement identifying the decision which is impugned and the extent to which amendment or cancellation of the decision is requested;
- (c) the grounds on which the amendment or cancellation of the decision is requested.

Re. Article 112
(former Article 109)

No. 1

Reimbursement of appeal fees

The reimbursement of appeal fees shall be ordered in the event of interlocutory revision or where the Board of Appeal deems an appeal to be admissible, if such reimbursement is equitable by reason of a substantial procedural violation. In the event of interlocutory revision, reimbursement shall be ordered by the authority whose decision has been impugned and, in other cases, by the Board of Appeal.

Re. Article 113
(former Article 110, No. 2)

No. 1

Observations by the parties

(1) The Board of Appeal shall transmit the appeal to the other parties and shall invite them to submit their observations on the appeal within such time limit as it may specify.

(2) The Board of Appeal shall communicate the said observations to the other parties.

(3) The Board of Appeal may at any time invite the parties to submit further observations within such time limit as it may specify.

Re. Article 113

(former Article 110, No. 2a)

No. 2

Waiving of right to participate

(1) The parties to the appeal proceedings, other than the appellant and the proprietor of the patent, may at any time waive their right to participate in these proceedings. Such waiver must be declared to the European Patent Office; it shall be irrevocable. In the event of one of the parties to the appeal proceedings, other than the proprietor of the patent, not submitting observations within the time limit referred to in paragraph 1 of Article ... (Re. Article 110, No. 2), he shall be deemed to have waived his right to participate in these proceedings.

(2) The procedural fees arising after the exercise of a waiver by one party may not be charged to him, except to the extent that he is responsible for them.
