

# BR/GT I/70 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.

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

Luxembourg, 22 October 1970  
BR/GT I/70/70

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- Secretariat -

"Implementing Regulations" sub-Committee  
of Working Party I

WORKING DOCUMENT

Articles 101, Numbers 1, 3 and 4 (new)  
113, Number 3  
114, Number 2  
115, Number 1 and 2  
130, Numbers 1 and 2

(Text drawn up by the Drafting Committee)

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Re. Article 101  
(former Article 96d)

No. 1 (new)

Form of the notice of opposition

The notice of opposition shall contain:

- (a) the name and address of the opponent and the State in which his residence or registered place of business is located, in accordance with the provisions of Article ... (Re. Article 66, No. 1), paragraph 2(c);
- (b) the file number of the European patent against which opposition is lodged, and the name of the proprietor and title of the invention;
- (c) a statement of the extent to which the European patent is opposed and of those grounds, prescribed by Article 101(a) (new)<sup>7</sup> of the Convention, on which opposition is based.
- (d) if the opponent 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).

Note :

Article 101(1), second sentence, of the First Preliminary Draft lays down that notice of opposition must be given in writing. It will be appropriate to examine whether this provision should be transferred to the Implementing Regulations, by analogy with Re. Article 88, No. 1, on the Form of the Request for Examination.

Re. Article 101  
(former Article 96d)

No. 3 (new)

Rejection of the notice of opposition as inadmissible

(1) If the Opposition Division notes that the notice of opposition does not comply with the provisions of Article 101 of the Convention and of Article ... (Re. Article 101, No. 1) sub-paragraph (c), or does not indicate the patent against which opposition has been lodged, it shall reject the notice of opposition as inadmissible unless these deficiencies have been remedied before expiry of the opposition period.

(2) If the Opposition Division notes that the notice of opposition does not comply with the provisions of Article ... (Re. Article 101, No. 1) other than those mentioned in paragraph 1, it shall so notify the opponent and shall invite him to remedy the deficiencies noted within such period as it may specify. If the notice of opposition is not rectified in good time, the Opposition Division shall reject it as inadmissible.

Re. Article 101

(former Article 96d)

No. 3 (new)

Continuation ex officio of the opposition proceedings

(1) In the event of the death or legal incapacity of an opponent, the opposition proceedings may be continued ex officio, even without the participation of the heirs or legal representatives. The same shall apply when the opposition is withdrawn.

(2) If the Opposition Division notes, once the opposition proceedings have begun, that the opposition was lodged by a third party who was legally incapable or was not represented in accordance with the provisions of Article 172 of the Convention, the proceedings shall be continued ex officio. Such procedural steps as may already have been taken shall be deemed to be fully valid.

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Re. Article 113

(former Article 11C, No. 3)

No. 3

Application of certain provisions

Subject to any provision to the contrary in the Convention or in these Regulations, the provisions relating to proceedings before the department which has made the decision from which the appeal is brought, shall be applicable to appeal proceedings mutatis mutandis.

Re. Article 114

(former Article 111 No. 2)

No. 2

Conduct of hearings

(1) The hearing shall be opened and directed by the Chairman in whom shall be vested the maintenance of order at the hearing.

(2) The Chairman shall argue the case with the parties and their representatives on the basis of the facts and of the law. Other members of the Board of Appeal may question the parties and their representatives.

(3) Following discussion of the case, the Chairman shall declare the hearing closed. The Board of Appeal may order the re-opening of the hearing<sup>7</sup>.

Notes :

1. These provisions which are based on Articles 56 (1), 57, 59 (2) and 61 of the Rules of Procedure of the Court of Justice of the European Communities, dated 3 March 1959, are to be re-examined later with government legal experts.
2. Some members of the sub-Committee consider that the details of the proceedings before the Boards of Appeal, in so far as they do not affect the rights or obligations of any person concerned in the proceedings, should be governed by rules of procedure which could easily be revised and which could be drawn up either by the President of the European Patent Office or by the Boards of Appeal. These rules of procedure might be submitted to the Administrative Council of the European Patent Office for its approval.

Re. Article 115

(former Article 112 No. 1)

No. 1

Pronouncement of the decision of the Board  
of Appeal

The decision on the appeal may be given orally at the hearing. Subsequently the decision in writing shall be notified to the parties.

Note :

The sub-Committee feels that the provisions of Article 115, paragraph 3, of the First Preliminary Draft should be extended to cover opposition proceedings; and it draws the attention of Working Party I to this point.



Re. Article 115

(former Article 112 No. 2)

No. 2

Form of the decision of the Board of Appeal

(1) The written decision shall be signed by those members of the Board of Appeal who contributed thereto. In the event of a member being prevented from appending his signature, this fact shall be mentioned below the decision, together with an indication by the Chairman or, in the event of the latter being prevented, by the senior member of the Board, of the reason for the prevention. Such mention shall be valid in place of the signature.

(2) The decision shall contain:

- (a) a statement that it is delivered by the Board of Appeal;
- (b) the date when the decision was taken;
- (c) the names of the Chairman and of the other members of the Board of Appeal taking part;
- (d) the names of the parties, and their representatives;
- (e) a statement of the issues to be decided;
- (f) a summary of the facts;
- (g) the reasons;
- (h) the order of the Board of Appeal, including, where appropriate, a decision on costs.

Note :

Paragraph 2 is based on the provisions of Article 63 of the Rules of procedure of the Court of Justice of the European Communities, dated 3 March 1959.

Re. Article 130

(former Article 120)

No. 1

Renewal fees in respect of patents of addition  
which have become independent.

- deleted; in view of Article 129, paragraph 3, second sentence, of the Convention.

An application for a European patent of addition which has been converted into an application for an independent patent or is deemed to be an independent patent application pursuant to Article 88, paragraph 4, of the Convention shall give rise to the payment of renewal fees, within four months, in respect of the years which have elapsed. Where an application has been converted, the period of four months shall commence on receipt of the declaration of conversion at the European Patent Office; in the case provided for in Article 88, paragraph 4, second sentence, of the Convention, the said period shall commence on expiry of the period provided for in Article 88, paragraph 4, first sentence, of the Convention. Article 130, paragraphs 2 and 3, of the Convention shall apply.

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Re. Article 130

(former Article 120)

No. 2

Renewal fees due in respect of applications  
for divisional European patents

Renewal fees due in respect of an application for a divisional European patent must be paid within four months of the filing of such application. Article 130, paragraphs 2 and 3 of the Convention shall apply.

Note :

The sub-Committee wondered whether Article 130 of the First Preliminary Draft should specify that renewal fees shall always be payable in advance and not retrospectively.

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