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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, 23 October 1970

BR/GT I/71/70

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- Secretariat -

"Implementing Regulations" sub-Committee  
of Working Party I

WORKING DOCUMENT

Articles 101, Number 2 (new)  
106, Number 1 (new)  
154, Numbers 1, 2, 3, 4, 5, 6 and 7  
155, Numbers 1 and 2  
156, Number 1 (new)  
157, Number 1  
159  
159, Number 1

(Text drawn up by the Drafting Committee)

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Re. Article 101

(former Article 96d)

No. 2 (new)

Requests for documents -

If during opposition proceedings a party refers to documents which are not available in the European Patent Office, the European Patent Office may require that those documents be produced within such period as it may specify. If such documents are not produced in good time, the European Patent Office may decide not to take into account any evidence based on them.

Re. Article 106

(former Article 102)

No. 1 (new)

Participation of the other parties at a  
hearing

When a party to the opposition proceedings is to be heard, the other parties may participate; the date of the hearing shall be notified to them in good time by the European Patent Office.

Articles 154 to 161 of the 1964 Draft

Note :

The Implementing Regulations Re. Articles 154 to 161 of the 1964 Draft are based in part on the Rules of Procedure of the Court of Justice of the European Communities (RPCJEC). The relevant Articles of the RPCJEC are indicated where they correspond to provisions of these Regulations.

Re. Article 154

No. 1

Investigation by the European Patent Office

Where the European Patent Office decides to hear the oral evidence of witnesses and experts or to inspect premises, it shall communicate to the parties the date of the hearing or inspection and the facts to be proved. The parties may attend the hearing or inspection and may question the witnesses and experts.

Note:

See Articles 45, (1) and 46, (3) of the RPCJEC.

Re. Article 154

No. 2

Part payment of costs of taking evidence

The taking of evidence by the European Patent Office may be made conditional upon deposit with it by the party who requested the evidence to be taken, of a sum the amount of which shall be fixed by reference to an estimate of the costs.

Note :

See Article 47, (3) of the RPCJEC.

Re. Article 154

No. 3

Summons to give evidence

(1) Witnesses and experts shall be summoned to give evidence. The summons shall give particulars of the facts regarding which they are to be heard.

(2) In addition to the particulars provided for in paragraph 1 and in Article ... (Re. Article 159, No. 1), paragraph 2, a summons shall contain the names of the parties to the proceedings and particulars of the rights which the witnesses or experts may invoke under the provisions of Article ... (Re. Article 154, No. 6).



Re. Article 154

No. 4

Commissioning experts

(1) Expert reports may be made in writing or orally.

(2) The terms of reference of the expert shall include:

- (a) a precise description of his task;
- (b) the time limit laid down for the submission of the expert report;
- (c) an indication that he may be called upon to take an oath, in accordance with the provisions of Article ... (Re. Article 154, No. 5);
- (d) the names of the parties to the proceedings;
- (e) particulars of the rights which he may invoke under the provisions of Article ... (Re. Article 154, No. 6).

(3) A copy of any written report shall be submitted to the parties.

Note :

See Article 49, (1) and (6) of the RPCJEC.

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Re. Article 154

No. 5

Hearing of witnesses and experts

Before a witness or expert may be heard, he shall be informed that he may be required to take an oath /and that false testimony may incur sanctions<sup>7</sup>. The oath shall be taken in the manner laid down by the national law of the witness or expert concerned.

Notes :

1. The sub-Committee considered it necessary to place between brackets the provision concerning possible sanctions for false testimony, in view of the connection between this provision and Article 154, paragraph 5, of the Preliminary Draft, on which no decision has yet been taken.
2. See Article 47, (4) and (5) of the RPCJEC.

Re. Article 154

No. 6

Payment of expenses of witnesses and experts

(1) Witnesses and experts who appear before the European Patent Office shall be entitled to appropriate reimbursement of expenses for travel and subsistence. An advance for these expenses may be granted to them.

(2) Witnesses who appear before the European Patent Office shall also be entitled to appropriate compensation for loss of earnings, and experts to fees for their work. These payments shall be made to the witnesses and experts after they have fulfilled their duties or tasks.

(3) The Administrative Council shall lay down the conditions governing the implementation of the provisions of paragraphs 1 and 2 of this Article. Payment of amounts due pursuant to these paragraphs shall be made by the European Patent Office.

Note :

See Article 51.(1) and (2) of the RPCJEC.

Re. Article 154

No. 7

Conservation of evidence

(1) On request, the European Patent Office may, without delay, hear oral evidence or conduct inspections, with a view to conserving evidence of facts liable to affect a decision which it might be called upon to take with regard to an existing application or a European patent, where there is reason to fear that it might subsequently become more difficult to even impossible to take evidence.

(2) The request shall contain:

- (a) the name and address of the person making the request and the State in which his residence or registered place of business is located, in accordance with the provisions of Article ... (Re. Article 66, paragraph 2(c);
- (b) sufficient identification of the application or of the European patent in question;
- (c) the designation of the facts in respect of which evidence is to be taken;
- (d) particulars of the way in which evidence is to be taken;
- (e) a statement establishing a prime facie case for fearing that it might subsequently become more difficult or impossible to take evidence.

(3) The request shall not be deemed to have been submitted until the fee prescribed by the Rules relating to fees adopted pursuant to the Convention has been paid.

(4) The decision on the request shall be incumbent upon the department of the European Patent Office required to take the decision liable to be affected by the facts to be established. The provisions of the Convention and of these Regulations with regard to the taking of evidence in proceedings before the European Patent Office shall be applicable to proceedings before the said department.

Re. Article 155

No. 1-

Calculation of time limits

(1) Periods shall be laid down in terms of full years, months, weeks or days.

(2) Computation shall start on the day following the day on which the relevant event occurred; in this respect, the term "event" shall cover the expiry of another period.

(3) When a period is expressed as one year or a certain number of years, it shall expire in the relevant subsequent year in the month having the same name and on the day having the same number as the month and the day on which the said event occurred provided that if the relevant subsequent month has no day with the same number the period shall expire on the last day of that month.

(4) When a period is expressed as one month or a certain number of months, it shall expire in the relevant subsequent month on the day which has the same number as the day on which the said event occurred, provided that if the relevant subsequent month has no day with the same number the period shall expire on the last day of that month.

(5) When a period is expressed as one week or a certain number of weeks, it shall expire in the relevant subsequent week on the day having the same name as the day on which the said event occurred.

Note :

This Article is largely based on Rules 80.1 and 80.2 of the PCT Regulations.

Re. Article 155

No. 2

Extension of time limits

(1) If the last day of the period is a day on which the European Patent Office is not open for receipt of documents or on which ordinary mail is not delivered in the locality in which the European Patent Office is situated, the period shall be extended until the first day thereafter on which the European Patent Office is open for receipt of documents and on which ordinary mail is delivered.

(2) Paragraph 1 shall apply mutatis mutandis to the time limits provided for in the Convention or in these Implementing Regulations in the case of transactions to be carried out with the competent authority within the meaning of Article 64, paragraph 1 (b) of the Convention.

Re. Article 156

No. 1 (new)

Observation of time limit prevented by force majeure

(1) Applications for re-establishment of the applicant's rights shall be presented in writing. Such applications shall not be considered to be made until after the fee prescribed by the Rules relating to fees adopted pursuant to this Convention has been paid.

(2) If an application for re-establishment of the applicant's rights is granted, an entry to this effect shall be made in the Register of European Patents and published in the European Patent Bulletin; provided that an entry has been published in accordance with Article 86 of the Convention.

Note :

1. Paragraph 1 would be superfluous if the expression "in writing" were added to Article 156 (2), first sentence of the Convention. However, see Re. Article 88, No. 1 paragraph 1, and the Note on Re. Article 101, No. 1.
2. Article 156 (6) of the Convention stipulates that anyone who exploits an invention in good faith in the course of the period between the refusal or the presumed withdrawal of a published European Patent application and the publication of the notification of the re-establishment of the applicant's rights or who has made actual and serious preparations to exploit the invention, may freely continue such exploitation in the course of his business or for the needs thereof. It therefore seems necessary to make provision in the Implementing Regulations for an entry concerning the re-establishment of the applicant's rights to be published in the Register of European Patents and the European Patent Bulletin.

Re. Article 157

No. 1

Death of applicant or proprietor

The President of the European Patent Office shall determine how the public notice is to be given.

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Re. Article 159

Miscellaneous provisions relating to proceedings  
and the issue of documents

Note :

The provisions numbered Re. Article 159 Nos. 1 to 9 were only grouped under this article for the sake of convenience. Owing to the present state of the First Preliminary Draft it has not been possible to link them with individual provisions made in that text.

Re. Article 159

No. 1

Term and form of the summons

(1) A summons to a hearing, or a preliminary investigation shall give a minimum of one month's notice unless the parties agree to a shorter period.

(2) The summons shall state the consequences to which non-appearance may give rise, pursuant to the Convention or to these Regulations.

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