

# BR/GT I/76 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 -

NOTE

Subject : Swedish Observations and Proposals Concerning the  
Naming of the Inventor.

1. It has been decided by Working Party I (cf Minutes of the meeting in July 8 - 11, 1969, point 35) to examine, at time when the implementing rules are dealt with, whether the rights of the inventor are adequately safeguarded.
2. The Sub-Committee dealing with the implementing rules examined during its first meeting (June 24 - 26, 1970) the rules under Art. 17. The Swedish delegation could not agree to the proposed rules mainly for the reason that there was no obligation on the part of the applicant to name the inventor until the time when the fees for grant and printing shall be paid. Moreover in the proposal there was no penalty in the case where the name of the inventor is not given in due time.
3. The Swedish delegation therefore proposed to incorporate the corresponding PCT-provision in Re Art. 17. Because of the Swedish proposal the discussion on Re Art. 17 was postponed. The Swedish delegations in Working Party I and the Sub-Committee have further considered the question of the inventor.



4. The question is of great importance to the Nordic countries. When the new patent legislation was adopted in the Nordic countries in 1967 it contained an obligation to mention the inventor at time of filing an application. This obligation is based on a very strong tradition in the Nordic countries. The main reason for having that obligation is that if the applicant can wait a long time before mentioning the inventor the difficulties in ascertaining the actual inventorship will increase. Furthermore, if the applicant is not required to show proof of assignment from the inventor, the latter will have the burden of proof as to the inventorship, which will be particularly difficult to fulfill at a late stage. Particularly in the case of employees inventions the inventor will therefore - with the original proposal - be placed at a definite disadvantage.
5. The Swedish delegation therefore considers it necessary to make it obligatory for the applicant to show that he is entitled to the invention. Such a provision is contained in the patent laws of the Nordic countries.
6. According to the Swedish point of view the inventor shall be mentioned in the European patent applicant at the time of filing in cases where at least one of the designated states has such a provision in its national law. This corresponds to the PCT-provision concerning the naming of the inventor. If the inventor is not named where required by the law of a designated state an observation to that effect should be made in an official action. If the action is not complied with the designation of that state should be deemed to be withdrawn.

7. If the applicant is not himself the inventor the European patent application shall contain a deed of assignment if at least one of the designated states has such a provision in its national law. If the applicant has not furnished the assignment according to the national law of a designated state an observation to that effect should be made in an official action. If the action is not complied with the designation of that state should be deemed to be withdrawn.
8. The provisions according to the proposals under 6 and 7 should be incorporated in Art. 66. The regulations now proposed under Art. 17 should be retained with slight amendments. The proposed wording is annexed. The regulations under Art. 66 must be correspondingly supplemented.

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PROPOSAL

Art. 66 : Add the following three sub-paragraphs under paragraph (1).

- (e) the name of an prescribed data concerning the inventor where the national law of at least one of the designated states requires these indications be furnished at the time of filing a national application;
- (f) a document proving that the applicant is entitled to the invention by the inventor where the national law of at least one of the designated states requires such a document;

- (g) if the applicant fails to comply with the requirements under sub-paragraph (e) and (f) the designation of the state or states in question shall be deemed to be withdrawn.

(Article 77 and 78 will have to be amended in order to give the applicant occasion to correct a deficiency with regard to the paragraphs now proposed).

Re Art. 17 : Number 1 : Add the following sub-paragraph.

- (4) The provisions in sub-paragraph (1, the second sentence) - (3) shall not apply where Art. 66 (e) and (f) apply.
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