

# BR/GT I/80 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

Brussels, 19 November 1970  
BR/GT I/80/70

---

- Secretariat -

NOTE BY THE NETHERLANDS DELEGATION

Delegations to Working Party I will find annexed hereto a note submitted by the Netherlands delegation on Article 105a (new), of the Preliminary Draft Convention (see proposals by the Chairman of Working Party I: BR/GT I/49/70).

---

BR/GT I/80 e/70 lcr/PB/prk

Note and proposal by the Netherlands delegation  
concerning Article 105a (new) of the  
Preliminary Draft Convention

Under Article 105a (new), a European patent is, when revoked, deemed, from the outset, not to have had the effects of a European patent. This article thus has the effect of back-dating revocations. In the Netherlands, however, there has been no practical experience in the patent field of this principle of retrospective effect. There probably are other countries in which this question is not completely clear.

In order to avoid the occurrence, in certain countries such as the Netherlands, of legal uncertainty which could only be removed by the gradual development of jurisprudence in this respect, and in order to minimise discrepancies between the Contracting States, the Netherlands delegation proposes additional rules, relating in particular to the three following points.

1. Compensation paid voluntarily by third parties to the proprietor of the revoked patent.
2. Legal decisions on infringements in the past.
3. Licensing contracts.

The Netherlands delegation proposes that these questions be settled by the following provision which, in its opinion, requires no further explanation.

"Notwithstanding national legal provisions relating to civil offences, the retrospective effect of revocation shall affect neither infringement decisions, provided that they have already been implemented, nor, subject to any provision to the contrary, contracts previously concluded."

---