

BR/GT I/84 e/70

Travaux Préparatoires EPC 1973

Comment:

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- Secretariat -

"Implementing Regulations" Sub-Committee
of Working Party I

WORKING DOCUMENT

Re. Articles 16, Nos. 1 bis and 2 bis
17, Nos. 1, 2 and 3
21, No. 3
66, No. 5
69, No. 1

(Text drawn up by the Drafting Committee)

Re. Article 16

No. 1 bis

Suspension of opposition proceedings

[(1) If, during the examination of an opposition lodged against a European patent, proof is provided to the European Patent Office that proceedings have been opened for the purpose of establishing that a person referred to in Article 15, paragraph 1, of the Convention, other than the proprietor of the patent, is entitled to the European patent, the European Patent Office shall stay the proceedings for examination of the opposition unless the person who claims to be entitled to the European patent consents to the continuation of such proceedings. Such consent must be notified in writing to the European Patent Office; it shall be irrevocable.

(2) If the proof referred to in paragraph 1 is provided during the opposition period, the European Patent Office shall stay proceedings for the examination of oppositions lodged against the European patent, subject to the consent referred to in paragraph 1.

(3) Where proof is provided to the European Patent Office that a final decision has been given in favour of the proprietor of the patent in the proceedings concerning entitlement to the European patent, proceedings for examination of the opposition shall be resumed or opened with the said proprietor. If the decision is in favour of the person who claimed to be entitled to the European patent, the proceedings shall not be resumed or opened before the expiry of a suitable period.

(4) Notification of the suspension and resumption or opening of the proceedings shall be entered in the Register of European Patents and published in the European Patent Bulletin. 7

Re. Article 16, No. 1 bis

Notes:

1. Adoption of this Article pre-supposes an amendment to Article 16 of the First Preliminary Draft Convention, in order to extend that Article to cover opposition proceedings (see reports, point 3C, paragraph 2).
2. Adoption of this Article would entail the deletion of Note 1 to Article ... (Re. Article 16, No. 1).

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Re. Article 16

No. 2 bis

Limitation of the option to surrender a European patent

[As from the receipt by the European Patent Office of notification that the proceedings referred to in Article ... (Re. Article 16, No. 1 bis) have been opened, and up to the resumption of the opposition proceedings, the European patent may not be surrendered in any of the Contracting States, save with the consent of the person who instituted the said proceedings. If, after a period of one month from receipt of the notification, proof that such proceedings have been instituted has not been furnished, the proprietor of the patent shall recover his right to surrender the said patent until such time as this proof is provided.]⁷

Notes:

1. Adoption of this Article pre-supposes an amendment to Article 16 of the First Preliminary Draft Convention, in order to extend the provisions of that Article to cover opposition proceedings.
2. The question still remains to be decided whether, in the case of assignment proceedings being opened (see note 3a to Re. Article 16, No. 1), an implementing regulation should be adopted corresponding to such an Article.

It should also be examined whether, for the purpose of giving guarantees to the person who is entitled to the European patent, the option of the applicant for the patent to dispose of the application should be further limited.

3. The text of Re. Article 16, No. 2 (BR/42/70) will be aligned on that of the present provision.

Re. Article 17

No. 1

Mention of the Inventor

(1) The inventor may only be designated before the European Patent Office by the proprietor of or applicant for the European patent. Such designation may be effected at any time prior to the end of the opposition period, or, where an opposition has been lodged, prior to the time when such opposition gives rise to a final decision.

- (2) {
(3) { As in BR/42/70

Notes:

1. This Article pre-supposes an amendment to Article 17 of the First Preliminary Draft Convention.
2. Adoption of this Article entails the deletion of note 2 to the present Article ... (Re. Article 17, No. 1).

Re. Article 17

No. 2

Publication of the mention of the inventor

(1) Subject to the provisions of paragraphs 2 to 4 of this Article, the person designated as the inventor shall be mentioned as such in the Register of European Patents, in all relevant publications in the European Patent Bulletin, and in the publications of the European patent application and the European patent specifications.

(2) In the event of it no longer being possible, when the inventor is designated to apply the provisions of paragraph 1 in full, the name of the inventor shall be mentioned in the European Patent Bulletin and, if the applicant for or proprietor of the European patent so requests, in the publications of the European patent application or the European patent specifications not yet distributed.

(3) In the event of a third party notifying the European Patent Office of a final decision whereby the applicant for or proprietor of a European patent is required to designate him as the inventor, the provisions of paragraphs 1 and 2 shall apply. However, in the case referred to in paragraph 2, the third party may also ask to be mentioned in the publications of the European patent application or European patent specification not yet distributed.

Re. Article 17, No. 2

(4) The measures provided for in paragraphs 1 and 2 shall not be applicable where the inventor designated by the applicant for or proprietor of a European patent addresses to the European Patent Office a written renunciation of his title as inventor.

Notes:

1. See note 2 to Re. Article 17, No. 1.
2. This Article pre-supposes an amendment to Article 17 of the First Preliminary Draft Convention.

Re. Article 17

No. 3

Rectification or cancellation of the designation of
an inventor

(1) An incorrect designation of an inventor may not be rectified or annulled save upon request, accompanied by the consent of the wrongly designated person and, in the event of such request not being submitted by the applicant for or proprietor of a European patent, by the consent of that party. In the absence of such consent, the claimant may produce a final decision.

(2) In the event of an incorrect mention of the inventor having been entered in the Register of European Patents or published in the European Patent Bulletin, such entry or publication shall be rectified. The mention of an incorrect designation of the inventor shall be rectified in all publications of the European patent application or European patent specifications not yet distributed. This provision shall apply to the annulment of an incorrect designation of the inventor.

Notes:

1. See note 2 to Re. Article 17, No. 1.
2. This Article pre-supposes an amendment to Article 17 of the First Preliminary Draft Convention.

Re. Article 21

No. 3

Grant of a patent of addition to assignees
of the applicant for or proprietor of a parent patent

(1) The person or persons entered in the Register of European Patents as proprietors of the parent European patent shall be deemed to be the proprietors of that patent, within the meaning of Article 21, paragraph 3, of the Convention for the purposes of the grant of a European patent of addition.

(2) If proof is provided to the European Patent Office that the parent European patent has been the subject of one or more assignments in all or in some of the Contracting States, such assignment being subject to opposition before the central industrial property authorities of States in question, the assignee or assignees in the Contracting States in respect of which the patent of addition is granted shall be deemed to be proprietors of the parent European patent, within the meaning of Article 21, paragraph 3, of the Convention for the purposes of the grant of the patent of addition.

Re. Article 66

No. 5

Form and content of the abstract

∟ (1) The abstract shall indicate the title of the invention.

(2) The abstract shall contain a concise summary of the disclosure as contained in the description, the claims and any drawings; the summary shall indicate the technical field to which the invention pertains and shall be drafted in a way which allows the clear understanding of the technical problem, the gist of the solution of that problem through the invention and the principal use or uses of the invention. The abstract shall, where applicable, contain the chemical formula, which, among those contained in the application, best characterises the invention. It shall not contain statements on the alleged merits or value of the invention or on its speculative application.

(3) The abstract shall not, in principle, contain more than one hundred and fifty words.

(4) If the European patent application contains drawings, the applicant shall indicate the figure or, exceptionally, the figures of the drawings which he suggests should accompany the abstract when the abstract is published. The European Patent Office may decide to publish one or more other figures if it considers that they better characterise the invention. Each main feature mentioned in the abstract and illustrated by a drawing shall be followed by a reference sign, placed between parentheses.

Note to paragraph 4:

Paragraph 4 is based on the assumption that the abstract may be published separately from the publication of the European patent application.

Re. Article 66, No. 5

(5) The abstract shall be so drafted that it constitutes an efficient instrument for purposes of selection in the particular technical field, particularly by making it possible to assess whether there is a need for consulting the patent application itself._7

Notes:

1. The term "summary" which appears in certain provisions of the Draft Implementing Regulations is replaced here by "abstract", the term used in the First Preliminary Draft Convention.
2. This Article has been placed between square brackets as it has not yet been finally decided whether an abstract will be required.

Re. Article 69

No. 1

Notification sent to the applicant informing him that his patent application is deemed to be withdrawn

(1) If the European Patent Office notes that a European patent application is deemed to be withdrawn, it shall so notify the applicant in accordance with the provisions of Article 161 of the Convention.

(2) If the applicant considers that the European patent application should not be deemed to be withdrawn, he may, within a period of two months from the notification referred to in paragraph 1, apply for a decision by the European Patent Office. Such decision shall be taken only if the European Patent Office does not share the opinion of the applicant.

Notes:

1. The Sub-Committee considers that Working Party I should examine at the appropriate time whether the general references to the Convention made in a number of Articles in the Preliminary Draft Convention should be extended to the Implementing Regulations. In this connection, it points out the examples of Articles 88, 155, 159 and 161 of the Preliminary Draft Convention.
 2. (To be drafted later by the Secretariat).
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