

BR/GT I/86 e/70

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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, 2 December 1970
BR/GT I/86/70

- Secretariat -

WORKING PARTY I

WORKING DOCUMENT

PRELIMINARY DRAFT OF A CONVENTION
ESTABLISHING A EUROPEAN SYSTEM
FOR THE GRANT OF PATENTS

Articles 55
55a new
101
101a new
101b new
105
105a new

(Text drawn up by the Drafting Committee)

Article 55 (former Article 56)
Examining Divisions

(1) An Examining Division shall be responsible for the examination of each application for a European patent from the time when an Examining Section ceases to be responsible under Article 54.

(2) An Examining Division shall consist of three technical examiners. Nevertheless, the proceedings prior to a final decision shall, as a general rule, be entrusted to one member of the Division. The Division shall hear the applicant itself. If the Examining Division considers that the nature of the decision so requires, it shall be enlarged by the addition of a legally qualified examiner. In the event of parity of votes, the vote of the Chairman of the Division shall be decisive.

Article 55a (new)
Opposition Divisions

(1) An Opposition Division shall be responsible for decisions in respect of oppositions against any European patent.

(2) An Opposition Division shall consist of three technical examiners, two of whom shall not have taken part in the proceedings for grant of the patent to which the opposition relates. The Opposition Division may entrust all proceedings prior to a final decision to one of its members. It shall hear the parties itself. If the Opposition Division considers that the nature of the decision so requires, it shall be enlarged by the addition of a legally qualified examiner who shall not have taken part in the proceedings for grant of the patent. In the event of parity of votes, the vote of the Chairman of the Division shall be decisive.

CHAPTER III
OPPOSITION PROCEDURE

Article 101 (former Article 96d)

Opposition

(1) BR/48/70, page 38, unchanged

(1a) The opposition shall apply to the European patent in all the Contracting States in which it has effect. If the European patent belongs to different proprietors in different States, such proprietors shall be considered as joint proprietors for the purposes of opposition proceedings.

(2) {
(3) { BR/48/70, page 37, unchanged

Article 101a (new)

Grounds for opposition

Opposition may only be lodged on the grounds that:

- (a) the subject matter of the European patent is not patentable within the terms of Articles 9 to 14;
- (b) the European patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art;
- (c) the subject matter of the European patent extends beyond the content of the application as filed.

Article 101b (new)

Examination of opposition

(1) If the opposition is admissible, the Opposition Division shall examine the facts, in so far as they lie within the grounds for opposition laid down in Article 101a; this examination shall not be restricted to the facts, evidence and arguments provided by the parties and the relief sought.

(2) The Opposition Division may disregard fresh facts or evidence submitted by the parties concerned, which were not included in the statement of grounds for opposition or in the reply to the opposition.

Note to paragraph 1: The English text of Article 113 requires to be amended accordingly.

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Article 105 (101)

Decision in opposition proceedings

(1) If the Opposition Division is of the opinion that the grounds for opposition mentioned in Article 101a prejudice the maintenance of a patent, it shall revoke the European patent.

(2) If the Opposition Division is of the opinion that the grounds for opposition mentioned in Article 101a do not prejudice the maintenance of the patent, it shall reject the opposition, if there is no need to amend the specification.

(3) If the Opposition Division is of the opinion that, taking into consideration the amendments made by the proprietor of the patent during the opposition proceedings, the grounds for opposition mentioned in Article 101a do not prejudice the maintenance of the patent, it shall inform the parties that it intends to maintain the patent as amended and shall request the proprietor of the patent to pay, within a period of one month, the fee prescribed for the printing of a new specification by the Rules relating to fees adopted pursuant to this Convention. If the fee is not paid in due time, the European patent shall be revoked. When the fee for the printing of the new specification has been paid, the Opposition Division shall decide to maintain the European patent as amended. The provisions of Article 20, paragraph 2, are applicable mutatis mutandis.

(4) deleted

(5) deleted

Article 105a (new)
Effect of the decision

Once the decision revoking the European patent wholly or in part has become final, the patent shall be deemed, to the extent that it has been revoked, not to have had, as from the outset, the effects specified in Article 18.
