

# **BR/GT I/87 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

Luxembourg, 3 December 1970  
BR/GT I/87/70

- Secretariat -

WORKING PARTY I

WORKING DOCUMENT

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

Articles 6, 40, 69a, 77, 78, 124, 125, 126, 127 and 128  
(Text drawn up by the Drafting Committee)

BR/GT I/87 e/70 ern/PA/gc

Article 6 (former Article 7)

Simultaneous protection

It shall be a matter for the Contracting States to decide whether, and on what terms, the protection given to an invention by a European patent application or a European patent and the protection given by a national patent application or a national patent may be enjoyed simultaneously, in so far as the invention originates from one and the same inventor.

Article 40

Liability

(1) printed 1970 Draft, unchanged

(2) In the matter of non-contractual liability, the European Patent Office shall be bound to make good any damage caused by its employees in the performance of their duties in accordance with the provisions of the law of the Contracting State in which the European Patent Office is located. If the damage is caused by employees attached to a branch referred to in Article 33, paragraph 2, the provisions of the law of the Contracting State in which such branch is located shall apply.

(3) printed 1970 Draft, unchanged

(4) Disputes under paragraphs 1 and 2 shall be decided by the courts with jurisdiction to decide such disputes in the place at which the European Patent Office, or the branch, as the case may be, is located.

Article 69a (new)

Naming of the inventor

The request for the grant of a European patent shall identify the inventor where the national law of at least one of the designated Contracting States requires such identification to be supplied at the time of filing a national application or at any time thereafter.

Article 77 (former Article 76)

Examination of the European patent application  
for formal and obvious deficiencies

- (1) {
- (2) { printed 1970 Draft, unchanged
- (a) to (f) {

(g) whether the inventor has been identified  
pursuant to Article 69a.

Article 72 (former Article 77)

Notification and refusal of the application

(1) printed 1970 Draft, unchanged

(2) If the examination provided for in Article 77, paragraph 2(a) to (f), reveals that the invention or the application for a European patent does not meet the requirements to be taken into consideration in this examination, the Examining Section shall inform the applicant accordingly and invite him to make observations or to remedy the disclosed deficiencies within a period to be fixed by the Section. The description, claims and drawings may be amended only to an extent sufficient to remedy the disclosed deficiencies in accordance with the observations of the Examining Section.

(3) {  
(4) { printed 1970 Draft, unchanged  
(5) {

(6) If the examination provided for in Article 77, paragraph 2(g), reveals that the inventor has not been identified, the Examining Section shall invite the applicant to do so. If the inventor has not been identified before the end of the 16th month after the priority date, the designation of any Contracting State requiring such identification in respect of national applications shall be deemed to be withdrawn.

CHAPTER IV  
CONVERSION OF A EUROPEAN PATENT APPLICATION INTO A NATIONAL APPLICATION

Article 124 (former Article 114)

Request for the application of national procedure

(1) Upon the request of the applicant for or proprietor of a European patent, the central industrial property offices of the designated Contracting States shall apply the procedure for the grant of a national patent :

- (a) when the European patent application is deemed to be withdrawn pursuant to Article 15, paragraph 5 ;
- (b) when the European patent application cannot be processed further as a result of a procedural limitation pursuant to Article 186 ;
- (c) in such other cases as are provided for by the national law of such States.

(2) The request shall be made within a period of three months after the European patent application has been refused, withdrawn, or deemed to be withdrawn, or the European patent has been revoked. The effects referred to in Article 76, paragraph 1, shall lapse if the request is not submitted within the prescribed period.



Article 125 (former Article 115)

Submission and transmission of the request

(1) A request pursuant to Article 124 shall, subject to the provisions of Article 128, be submitted to the European Patent Office and shall specify the Contracting States in which application of the procedure for the grant of a national patent is desired. The request shall not be deemed to be made until the fee prescribed in the Rules relating to fees adopted pursuant to this Convention has been paid.

(2) The European Patent Office shall transmit the request to the national central industrial property offices of the Contracting States specified therein, accompanied by a copy of the files relating to the European patent application or the European patent.

Article 126 (former Article 116)  
Formal requirements for conversion

(1) A European patent application transmitted in accordance with Article 125, paragraph 2, shall not be subjected to formal requirements of national law which are different from or additional to those provided for in this Convention or the Implementing Regulations.

(2) Any central industrial property office to which the application is transmitted may require that the applicant shall, within a period of not less than two months .

- (a) pay the national application fees and
- (b) submit a translation, into one of its official languages of the original text of the European patent application and, where appropriate, of the text, as amended during the European procedure, which the applicant wishes to submit to the national procedure.

Article 127 (former Article 117)

Notification and publication

- deleted -

BR/GT I/87 e/70 ern/PA/gc

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Article 128 (former Article 118)  
Application of national procedure  
in special cases

If, on expiry of the period referred to in Article 65, paragraph 5, the European patent application has not been transmitted by the national central industrial property office to the European Patent Office, the request pursuant to Article 124 shall be submitted to that national office. The latter shall, subject to the provisions of national security, transmit the request, together with a copy of the European patent application, directly to the national central industrial property offices of the Contracting States specified by the applicant in the request.

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