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Travaux Préparatoires EPC 1973

Comment:

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INTER-GOVERNMENTAL CONFERENCE
FOR THE SETTING UP OF A EUROPEAN
SYSTEM FOR THE GRANT OF PATENTS

Brussels, 14 January 1971

BR/GT I/99/71

- Secretariat -

CHAIRMAN'S PROPOSAL

for Article 156, paragraph 3 (former Article 186, paragraph 3)

Conversion during the period of progressive expansion

At the sixth meeting of Working Party I, held from 30 November to 2 December 1970, the Chairman of the Working Party undertook to submit a new proposal for Article 156, paragraph 3 (former Article 186, paragraph 3). In this new paragraph provision is made for converting the European patent application into a national patent application in those cases where, in view of the stage reached in the progressive expansion of the European Patent Office, the European patent application cannot be dealt with further.

The Chairman therefore proposes that Article 156 (former Article 186) be completed with a paragraph 3 as follows:

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PART IX
TRANSITIONAL PROVISIONS

Article 156 (former Article 186)

Progressive expansion of the field of activity of the
European Patent Office

(1) Applications for European patents may be filed with the European Patent Office from the date fixed by the Administrative Council on the recommendation of the President of the European Patent Office. To begin with, the examination of European patent applications pursuant to Article 88 may be restricted to certain areas of technology and subsequently be progressively extended to the remaining areas of technology.

(2) The Administrative Council may, on the recommendation of the President of the European Patent Office, further restrict the processing of a European patent application affected by the restriction provided for in paragraph 1; however, examination shall in any event be made as to whether the European patent application meets the conditions set out in Article 68.

Complement:

(3) Where, as a result of the procedure being restricted pursuant to paragraph 1, second sentence, or paragraph 2, a European patent application cannot be further processed, the European Patent Office shall notify the applicant accordingly and shall point out that pursuant to Article 124, he may make a request for the application of national procedure. The European patent application shall be deemed to be withdrawn on receipt of such request or on the expiry of a period of three months after such notification. This shall be drawn to the attention of the applicant in the notification.

Notes:

The proposed paragraph 3 adopts the solution whereby the European Patent Office draws the applicant's attention to the procedure for conversion, the applicant then having to make a new request pursuant to Article 124. Once such request has been made, the European Patent Office will take all the remaining steps, Article 124 and subsequent Articles having since been amended accordingly.

Another solution could also have been chosen, whereby the European Patent Office would apply the national procedure ex officio. This solution was rejected, in order to give the applicant a further opportunity to examine whether he really wishes to prosecute his patent application and whether, should this be the case, he wishes to apply the national procedure in all the designated Contracting States or only in some of the said States. As the applicant will generally be in receipt of a report on the state of the art, it is possible that he may abandon his application or request the application of the national procedure in fewer States than he had originally designated.

Some further questions connected with Article 156 (former Article 186) can be dealt with in the Implementing Regulations, such as the determination of the areas of technology in accordance with the patent classification or the provisions governing publication in the European Patent Bulletin of the restriction of the procedure or of the removal of such restriction.

