

# BR/GT I/103 e/71

## 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.

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- Secretariat -

"Implementing Regulations" Sub-Committee  
of Working Party I

WORKING DOCUMENT

Re. Article 16, Nos. 1 and 1bis  
54, No. 2  
79, No. 3  
101, No. 5  
120, No. 1  
85, No. 1  
139, Nos. 1 and 2  
159, Nos. 1, 7, 9, 10 and 11.

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(Text drawn up by the Drafting Committee)

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Re. Article 16

No. 1

Suspension of proceedings for grant

(1) - unchanged from BR/42/70.

(2) Where proof is provided to the European Patent Office that a final decision has been given in favour of the applicant in the proceedings concerning entitlement of the European patent, the European Patent Office shall notify the applicant that the proceedings for grant shall be resumed with that person following such notification. If the decision is in favour of the person who claimed to be entitled to the European patent, proceedings for grant shall not be resumed before the expiry of a suitable period, which may not be less than the period laid down in Article 16, first sentence, of the Convention.

(3) The time limits in force as regards the applicant at the date of suspension shall be interrupted by such suspension. If the proceedings are resumed, the time which has not yet elapsed shall begin to run as from the day on which the notification under paragraph 2 has been given.

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

*Note 2 in BR/42/70, p. 3, last sentence.  
Note 3(a) as amended.*

Re. Article 16

No. 1 bis

Suspension of opposition proceedings

/(1) - unchanged from BR/67/70.

(2) - unchanged from BR/67/70.

(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, the European Patent Office shall notify the parties that proceedings for examination of the opposition shall be resumed or opened following notification to the 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) The provisions of Article ... (Re. Article 16, No. 1), paragraphs 3 and 4 shall apply mutatis mutandis.<sup>7</sup>

Note:

The 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 30, paragraph 2).

Re. Article 54

~~(former Article 55)~~

No. 2

Delegation of duties

The President of the European Patent Office shall be authorised to entrust to officials who are not technically or legally qualified examiners the execution of individual duties falling to the Examining Sections, Examining Divisions or Opposition Divisions and posing no technical or legal problems.

Re. Article 79

No. 3

Restriction of the search report to a part of the invention in  
the application for a European patent

If the applicant does not respond to the invitation provided for in Article 79, paragraph 5 of the Convention, the International Patent Institute at The Hague shall draw up the report on the state of the art on that part of the application relating to the invention or plurality of inventions forming a single general inventive concept and occurring first in the claims.

Note:

This Regulation is an attempt to deal with the situation which may arise when

- (i) it appears before a search is done that there is a lack of unity of invention and/or
- (ii) it appears as a result of the search that there is a lack of unity of invention.

However, the attention of Working Party I is directed to the fact that there may be some difficulty over the interpretation of Article 79, paragraphs 5 and 6 of the 1970 Draft.

Re. Article 85

~~(former Article 86a)~~

No. 1

Publication of European patent applications and  
of the specification of a European patent

The President of the European Patent Office shall prescribe the form of the publication of the European patent application and of the specification of a European patent and the data which are to be included. The same shall apply for the publication of the translations pursuant to Article 123, paragraphs 2 and 3, of the Convention.

Note:

~~This Article replaces Re. Article 85, No. 1 in BR/59/70, page 1, and also covers Articles 98 and 107 of the First Preliminary Draft Convention. This Article is only provisionally attached to Article 85.~~

Re. Article 101

No. 5

Communications to the other opponents

(1) If several notices of opposition have been lodged, the Opposition Division shall communicate them to the other opponents at the same time as the notification provided for under Article 101, paragraph 3, of the Convention.

(2) Any written statement subsequently made by an opponent shall be communicated to the other parties. If such a statement refers to facts and evidence not indicated in the notice of opposition, and if the Opposition Division intends to take these facts and evidence into account, it shall invite the proprietor of the patent to comment on them within a period to be fixed by the Division.

*Opponent*

Re. Article 120

~~(former Article 443a)~~

No. 1

Transmittal of the international application  
to the European Patent Office

If an international application is filed with an authority of a Contracting State with effect for the European Patent Office, the Contracting State must ensure that the application reaches the European Patent Office no later than two weeks before the end of the thirteenth month after filing. If a priority is claimed, the priority date, or, if more than one priority is claimed, the date of the earliest priority, shall be taken as the beginning of the period.

Re. Article 139

No. 1

Failure of parties to appear at oral proceedings

If a party who has been duly summoned to oral proceedings before the European Patent Office does not appear as summoned, the proceedings may continue without him.

Notes:

1. The Note to Article 97 (BR/59/70) is to be deleted.
2. The word "hearing" is to be deleted from the Convention and the Implementing Regulations by the Secretariat and where appropriate, is to be amended to "oral proceedings".

Note

Article 139 is a new Article appearing in BR/70/70.

Re. Article 139

No. 2

Conduct of oral proceedings

~~4~~(1) The oral proceedings shall be opened and directed by the Chairman in whom shall be vested the maintenance of order at the oral proceedings.

(2) The Chairman shall argue the case with the parties and their representatives on the basis of the facts and of the law. The other members of the Division or Board may question the parties and their representatives.

(3) Following discussion of the case, the Chairman shall declare the oral proceedings closed. The Division or Board may order the re-opening of the oral proceedings. ~~3~~

Notes:

1. Re. Article 114, No. 1 (BR/59/70) is to be deleted.
2. The two Notes to Re. Article 114, No. 1, are to be attached to this Article, Re. Article 139, No. 2.

*Two Notes in BR/59-70, Page 17.*

Re. Article 159

No. 1

Summons

(1) The parties shall be summoned to oral proceedings or a preliminary investigation. A minimum of one month's notice shall be given unless they agree to a shorter period.

(2) The summons shall state the consequences to which non-appearance may give rise, pursuant to the Convention or to these Regulations.

Note:

Re. Article 106, No. 1 (BR/59/70) is to be deleted.

Note: The prov<sup>ns</sup> numbered Re. Art 159, Nos. 1 to 11 were ...  
as on P. 36 of BR/59/70

Re. Article 159

No. 7

Interruption of proceedings

- (1)     )
  - (2)     )
  - (3)     )
- unchanged from BR/67/70.

(4) Notwithstanding the provisions of Article 59, paragraph 1, second sentence, of the Convention, notification of the interruption or resumption of proceedings shall be entered in the Register of European Patents and published in the European Patent Bulletin.

Re. Article 159

No. 9

Form of notices and other communications from the  
European Patent Office

Notices and other communications from the European Patent Office are to be signed by and to state the name of the responsible official. Instead of the signature and statement of name a printed or stamped seal of the European Patent Office may be used.

Re. Article 159

No. 10

Lapse

(1) Rights of the European Patent Office to the payment of a fee shall lapse four years after the end of the calendar year in which the fee fell due.

(2) Rights against the European Patent Office for the refunding of fees or sums of money paid in excess of a fee, shall lapse four years after the end of the calendar year in which the right arose.

(3) The period of lapse shall be suspended in the case covered by paragraph 1 by a request for payment of the fee and in the case covered by paragraph 2 by a reasoned claim in writing. After the suspension it shall begin again and shall end at the latest six years after the end of the year in which it originally began.

Note: *It might be considered*  
~~The attention of the government financial experts is drawn to this provision. The Sub-Committee wondered in particular whether it would be suitable to extend this provision to all sums owed to or by the European Patent Office.~~

Re. Article 159

No. 11

Noting of certain legal consequences

(1) If the European Patent Office notes that

- (a) a European <sup>patent</sup> application is deemed to be withdrawn in whole or in part,
- (b) the designation of a Contracting State is deemed to be withdrawn,
- (c) an application for a European patent of addition is deemed to be an application for an independent European patent,
- (d) a notice of opposition or appeal is deemed not to have been given, or
- (e) an appellant is deemed to have waived his right to participate in appeal proceedings,

it shall so notify the person concerned in accordance with the provisions of Article 161 of the Convention.

(2) If the person concerned considers that the finding by the European Patent Office is inaccurate, he may, within a period of 2 months from the notification referred to in paragraph 1, apply for a decision by the European Patent Office. Such decision shall be given only if the European Patent Office does not share the opinion of the person requesting it.

Notes:

- 1. This Article replaces Re. Article 69, No. 1 (BR/67/70). Note thereto is to be attached to this Article.
- 4. It should be examined later whether this provision should be extended to cover the cases where the right to claim priority is lost for failure to comply with the requirements of Article 75, paragraphs 1 and 2, of the Convention.