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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

Luxembourg, 17 September 1971

BR/GT I/118/71

WORKING PARTY I

WORKING DOCUMENT

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

Articles 37
136
145

FIRST PRELIMINARY DRAFT OF THE
IMPLEMENTING REGULATIONS

Re. Articles 136, No. 4
136, No. 5
136, No. 6
145, No. 2
145, No. 7
145, No. 10

(Texts drawn up by the Drafting Committee)

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Article 37

Appointment of senior officials

- (1) (Unchanged from Second Preliminary
- (2) (Draft Convention
- (2) (Published - 1971

(3) The members and the Chairmen of the Boards of Appeal and of the Enlarged Board of Appeal shall be appointed by decision of the Administrative Council, taken on the proposal of the President of the European Patent Office. They may be re-appointed by decision of the Administrative Council after the President of the European Patent Office has been consulted.

Article 136

Investigation

(1) In any proceedings before an Examining Division, an Opposition Division or a Board of Appeal, evidence may be furnished either ex officio or at the instance of the parties to the proceedings by the following means in particular:

- (a) hearing the parties;
- (b) requesting information and the production of documents;
- (c) hearing witnesses;
- (d) receiving expert opinion;
- (e) inspection;
- (f) sworn statements in writing.

(2)

Unchanged from Second
Preliminary Draft Convention
published 1971

(3)

(4)

(5)

(6)

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- deleted -

- postponed -

Article 145

Reference to general principles

In the absence of procedural provisions in this Convention and these Implementing Regulations, the European Patent Office shall take into account the principles of procedural law generally recognised in the Contracting States.

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Re. Article 136

No. 4

Commissioning experts

(1) The European Patent Office shall decide in what form the report made by an expert whom it appoints shall be submitted.

(2) The terms of reference of the expert shall include:

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|-----|---|----------------------------------|
| (a) |) | Unchanged from First Preliminary |
| |) | Draft of the Implementing |
| (b) |) | Regulations, published 1971 |
| (c) | - | deleted - |
| (d) |) | |
| (e) |) | Unchanged from First Preliminary |
| |) | Draft of the Implementing |
| |) | Regulations, published 1971 |
| (3) |) | |

(4) (new) The parties may object to an expert. The department of the European Patent Office concerned shall decide on the objection. In taking this decision, it shall draw upon the principles of procedural law generally recognised in the Contracting States.

Re. Article 136

No. 5

Hearing of witnesses and experts

Before a witness or expert may be heard, he shall be informed that he may be required to take an oath and that perjury may incur sanctions.

Re. Article 136

No. 6

Payment of expenses of witnesses and experts

- (1)) Unchanged from First Preliminary
-) Draft of the Implementing
- (2)) Regulations, published 1971

(3) The Administrative Council shall lay down the details governing the implementation of the provisions of paragraphs 1 and 2 of this Article. Payment of amounts due pursuant to these paragraphs shall be made by the European Patent Office.

Re. Article 145

No. 2

Minutes of oral proceedings and
preliminary investigations

(1) Minutes of oral proceedings and preliminary investigations shall be drawn up containing the essentials of the oral proceedings or preliminary investigation, the judicially important statements made by the parties, the testimony of the witnesses, experts or parties and the result of any inspection.

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| (2) | (| |
| (3) | (| Unchanged from First Preliminary |
| | (| Draft of the Implementing |
| (4) | (| Regulations, published 1971 |

Re. Article 145

No. 7

Interruption of proceedings

(1) Proceedings before the European Patent Office shall be interrupted:

- (a) in the event of the death or legal incapacity of the applicant for or proprietor of a European patent or of the person authorised by national law to act on his behalf. To the extent that the above events do not affect the authorisation of a representative appointed under Article 153 of the Convention, proceedings shall be interrupted only on application by such representative;
- (b) in the event of the applicant for or proprietor of a European patent, as a result of some action taken against his property being prevented by legal reasons from continuing the proceedings before the European Patent Office;
- (c) (new) in the event of the death or legal incapacity of the representative of the applicant for or proprietor of a European patent.

(2) When, in the cases referred to in paragraph 1 (a) and (b), the European Patent Office has been informed of the identity of the person authorised to continue the proceedings before the European Patent Office, the European Patent Office shall notify such person and any interested third party that the proceedings shall be resumed as from a date to be fixed by the European Patent Office.

(2a) (new) - postponed -

Re Article 145, Number 7 (continued)

(3) The time limits, other than the time limit for making a request for examination and the time limit for paying the renewal fees, in force as regards the applicant for or proprietor of the patent at the date of interruption of proceedings shall begin again as from the day on which notification under paragraph 2 has been given. If such notification is given less than two months before the end of the period within which the request for examination must be made, the authorised person may request examination up to the end of two months after such notification has been given.

(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 145

No. 10

Extinction of certain rights

(1) Rights of the European Patent Office to the payment of a fee shall be extinguished after a period of four years from 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 be extinguished after a period of four years from the end of the calendar year in which the right arose.

(3) The period laid down in paragraphs 1 and 2 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, unless, in the meantime, judicial proceedings to enforce the right have begun; in this case the period shall end at the earliest one year after the judgment enters into force.

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