

BR/GT I/126 e/71

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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, 14 October 1971

BR/GT I/126/71

- Secretariat -

WORKING PARTY I

WORKING DOCUMENT

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

Articles 35a
66
68
69
75a (new)
75b (new)
77
78
79
80
82
137
160a (new)

- FIRST PRELIMINARY DRAFT OF THE IMPLEMENTING REGULATIONS

Re. Article 79, No. 4 (new)

- FIRST PRELIMINARY DRAFT OF THE RULES RELATING TO FEES

Article 2

(Texts drawn up by the Drafting Committee)

CHAPTER Ia

Powers and functions of the Administrative Council

Article 35a

Adoption and amendment of general rules

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

(3) The Administrative Council shall take the decisions referred to in Articles 157, 160 and 160a.

Article 66

Requirements of the application

(1) Unchanged from Second Preliminary
Draft Convention published 1971

(2) - deleted - (Cf. Article 68, sub-paragraph (c)).

(3) An application for a European patent shall be subject to the payment of the filing fee and the fee for the report on the state of the art prescribed by the Rules relating to Fees adopted pursuant to this Convention. These fees must be paid within one month after the filing date.

(4) - deleted - (Cf. Article 79, paragraph 4a, second sentence).

Article 68

Date of filing

The date of filing of a European patent application shall be the date on which it satisfies the following conditions:

- (a) { Unchanged from Second Preliminary
- (b) { Draft Convention published 1971
- (c) there are, in one of the languages referred to in Article 34, paragraphs 1 and 2, a description and one or more claims, even though they do not comply with the other requirements of this Convention.

Article 69

Failure to pay the fees required for the application
or to provide a translation

An application for a European patent shall be deemed to be
withdrawn:

(a) if the fees provided for in Article 66, paragraph 3, have not
been paid within the prescribed time limit, or

(b) Unchanged from Second Preliminary
Draft Convention published 1971

PART V
EXAMINATION, GRANT AND OPPOSITION

CHAPTER I

Procedure prior to the introduction of the request
for examination

Article 76a (new)

Examination on filing of the European patent application

(1) The [Examining Section] shall examine the European patent application in the light of the provisions of Articles 68 and 69.

(2) If the examination referred to in paragraph 1 reveals that the requirements laid down in Article 68 are not satisfied, the [Examining Section] shall invite the applicant to remedy the disclosed deficiencies within a period of one month.

(3) If on expiry of the period specified in paragraph 2 the requirements laid down in Article 68 have not been met, the [Examining Section] shall inform the applicant that his application will not be dealt with as a European patent application.

Article 76b (new)

Transmittal of the application documents to
the International Patent Institute

If a European patent application has been accorded a filing date, and is not deemed to be withdrawn by virtue of Article 69, the European Patent Office shall transmit a copy of the documents of the European patent application to the International Patent Institute at The Hague for the purpose of drawing up the report on the state of the art.

Article 77

Examination of the European patent application
for certain deficiencies

(1) - deleted - (cf. Article 76a, paragraph 1)

(2) If a European patent application has been accorded a filing date, and is not deemed to be withdrawn by virtue of Article 69, the Examining Section shall examine:

- (a) whether the application satisfies the physical requirements laid down in the Implementing Regulations to this Convention for the implementation of this provision;
- (b) whether the inventor has been identified pursuant to Article 69a;
- (c) whether the application complies with the requirements of Article 66, paragraph 1(d);
- (d) whether the application complies with the requirements of Article 66, paragraph 1(e).

Article 78

Notification and refusal of the application

(1) - deleted - (cf. Article 77, paragraph 2)

(2) If the examination provided for in Article 77, paragraph 2(a) and (d), reveals that the European patent application 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 remedy the disclosed deficiencies within such period as it shall specify. 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. If the deficiencies are not remedied in due time, the Examining Section shall refuse the application.

(3) - deleted -

(4) - deleted - (cf. paragraph 2, third sentence)

(5) - deleted - (cf. Article 139)

(6) If the examination provided for in Article 77, paragraph 2(b), 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 filing date or, if a priority has been claimed, after the date or earliest date of priority, the designation of any Contracting State requiring such identification in respect of national applications shall be deemed to be withdrawn.

Article 78 (continued)

(7)

- (a) If the examination provided for in Article 77, paragraph 2(c), reveals that the drawings were filed later than the filing date of the application, the application shall be re-dated to the date on which the drawings were filed.
- (b) If the examination provided for in Article 77, paragraph 2(c), reveals that the drawings were not filed, the ☒ Examining Section 7 shall invite the applicant to do so within a period of one month. If the applicant files the drawings in due time, the application shall be re-dated to the date on which they were filed; otherwise the references to the drawings shall be considered as cancelled.

Article 79

Drawing up of the report on the state of the art

- (1) - deleted - (Cf. Article 66, paragraph 3)
- (2) - deleted - (Cf. Article 69, sub-paragraph (a))
- (3) - deleted - (Cf. Article 76b and paragraph 4a, first sentence, of this Article)

(4) The International Patent Institute at The Hague shall draw up the report on the state of the art on the basis of the claims, with due regard to the description and the drawings, if any, in the form prescribed in the Implementing Regulations to this Convention.

(4a) At the same time as drawing up the report on the state of the art the International Patent Institute shall determine the definitive contents of the abstract. This shall merely serve for use as technical information; it may not be taken into account for any other purpose, in particular not for the purpose of interpreting the scope of the protection sought.

(4b)

~~(5)~~ If the International Patent Institute considers that the application does not comply with the provisions of the Convention and the Implementing Regulations to such an extent that it is not possible to carry out a meaningful search into the state of the art on the basis of all or some of the claims, it shall either declare that search is not possible or shall, so far as is practicable, draw up a partial report. The declaration and the partial report referred to shall be considered, for the purposes of subsequent proceedings, as the report on the state of the art.

Article 79 (continued)

(5) ~~(8)~~ If the International Patent Institute considers that the European patent application does not comply with the requirement of unity of invention, it shall draw up the report on the state of the art on those parts of the European patent application which relate to the invention first mentioned in the claims; it shall notify the applicant that if reports on the state of the art are to be drawn up in respect of the other inventions the necessary fees for obtaining such reports must be paid within a period of one month. The International Patent Institute shall transmit to the European Patent Office a copy of the notification to the applicant. When it is established that the payment has been made, the International Patent Institute shall draw up reports on the state of the art for those parts of the European patent application which relate to inventions in respect of which the fees referred to were paid.

~~(6) - deleted -~~

(7) Any fee which has been paid under paragraph ~~6~~ ⁵ shall be refunded if, during the examination under Article 93, the applicant requests a refund and the Examining Division finds that the notification referred to in the said paragraph was not justified.

Article 80

Transmission of the report on the state of the art
and the abstract

The International Patent Institute shall transmit within the time limit prescribed in the Implementing Regulations to this Convention:

- (a) to the European Patent Office the report on the state of the art, copies of any cited documents and the definitive contents of the abstract;
- (b) to the applicant, a copy of the report on the state of the art, copies of any cited documents and the definitive contents of the abstract.

Article 82

Amendment of documents

(1) Unchanged from Second Preliminary
Draft Convention published 1971

(2) The provisions of paragraph 1 shall not prejudice the
application of Article 78, paragraph 2.

Article 137

Supplementary report on the state of the art

(1) Where it considers this to be necessary, the European Patent Office may at any time obtain a supplementary report on the state of the art from the International Patent Institute at The Hague.

(2)

(3)

(4)

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(Unchanged from the Second Preliminary
(Draft Convention published 1971
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Article 160a (new)

Application of Article 122

(1) Article 122 shall not apply until the Administrative Council so decides.

(2) The Administrative Council may, prior to application of Article 122, decide under what conditions and to what extent

- (a) the drawing up of the report on the state of the art prescribed by Article 79 may be dispensed with, and
- (b) the fee for obtaining the report on the state of the art may be refunded.

FIRST PRELIMINARY DRAFT OF THE IMPLEMENTING REGULATIONS

Re. Article 79

No. 4 (new)

The report on the state of the art shall contain the classification of the subject-matter of the European patent application in accordance with the international classification.

FIRST PRELIMINARY DRAFT OF THE RULES RELATING TO FEES

Article 2

Fees provided for in the Convention and in the
Implementing Regulations

Nos. 1 to 3 (Unchanged from First Preliminary
(Draft of the Rules relating to Fees
(published 1971

No. 4 : Fee for obtaining the report on the state of the
art (Article 66, paragraph 3, of the Convention)

Nos. 5 to 24 (Unchanged from First Preliminary
(Draft of the Rules relating to Fees
(published 1971
