

# BR/GT I/127 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.

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

Luxembourg, 15 October 1971  
BR/GT I/127/71

- Secretariat -

WORKING PARTY I

WORKING DOCUMENT

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

Articles	9
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- FIRST PRELIMINARY DRAFT OF THE IMPLEMENTING REGULATIONS

Re. Articles 66, No. 6  
79, No. 3

- FIRST PRELIMINARY DRAFT OF THE RULES RELATING TO FEES

Article 2

PART II  
SUBSTANTIVE PATENT LAW

CHAPTER I  
Patentability

Article 9  
Patentable inventions

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

(2) Inventions within the meaning of paragraph 1 shall in particular exclude:

- (a) scientific theories and mathematical methods;
- (b) ( Unchanged from Second  
( Preliminary Draft Convention  
( published 1971
- (c)
- (d) (amendment to the French text only)
- (e) methods for treatment of the human or animal body by surgery or therapy, as well as diagnostic methods;
- (f) mere presentations of information;
- (g) computer programmes.

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filing date, and is not deemed to be withdrawn by virtue of  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) (
- (b) ( - deleted -
- (c) (
- (d) (
- (e) whether the application satisfies the physical requirements  
laid down in the Implementing Regulations to this Convention  
for the implementation of this provision;
- (f) - deleted -
- (g) ( Unchanged from Second
- (h) ( Preliminary Draft Convention
- (i) ( published 1971

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(c) and (i), 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(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 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(h), 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(h), reveals that the drawings were not filed, the Examining Section 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) 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) 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 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 122

International search report

Subject to the provisions of Article 137, the international search report under Article 18 or the declaration under Article 17, paragraph 2(a) of the Co-operation Treaty shall take the place of the report on the state of the art under Article 79, paragraph 4.

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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) ( Unchanged from Second  
( Preliminary Draft Convention  
(3) ( published 1971

(4) - deleted -

PRELIMINARY DRAFT IMPLEMENTING REGULATIONS

Re. Article 66

No..6

Prohibited matter

(1)

- (a) (
- (b) ( Unchanged from First
- (c) ( Preliminary Draft Implementing
- ( Regulations published 1971

(2) If a European patent application contains prohibited matter within the meaning of paragraph 1, the European Patent Office may omit it from the publication in accordance with Article 85 of the Convention. It shall indicate the place and number of words or drawings omitted, and shall furnish, upon request, a copy of the passages omitted.

Re. Article 79

No. 3

Restriction of the report on the state of the art to  
a part of the application for a European patent

- deleted - (cf. Article 79, paragraph 6 of the  
Convention)

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PRELIMINARY DRAFT RULES RELATING TO FEES

Article 2

Fees provided for in the Convention and in the  
Implementing Regulations

The fees due to be paid to the European Patent Office as  
provided for in the Convention and in the Implementing Regulations  
shall be as follows:

Nos. 1 to 3                   (    Unchanged from First Preliminary  
                                  (    Draft published 1971

4. Fee for the report on the state of the art (Article 66,  
paragraph 3 and Article 79, paragraph 5, of the Convention).

5. Additional fee for a supplementary report on the state of  
the art (Article 137, paragraph 3, of the Convention).

Nos. 6 to 24                 (    Unchanged from First Preliminary  
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