

# **BR/GT I/129 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.



- Secretariat -

WORKING PARTY I

WORKING DOCUMENT

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

Articles	35a
	35b
	62
	65
	73
	88
	88a (new)
	101
	122
	129
	160
	160b (new)

- FIRST PRELIMINARY DRAFT OF THE IMPLEMENTING REGULATIONS

Re. Articles	34, No. 7
	59, No. 1
	62, No. 1
	64, No. 2
	130, No. 1
	145, No. 11

- 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)
    - (a) { Unchanged from Second Preliminary  
Draft Convention  
published 1971
  - (b) the time limits laid down in this Convention; this shall apply to the time limit laid down in Article 88, paragraph 2, only in the conditions laid down in Article 88a;
  - (c)
    - (2) {
    - (a) { Unchanged from Second Preliminary  
Draft Convention
    - (b) { published 1971
    - (c) {
    - (d) {
- (3) The Administrative Council shall take the decisions referred to in Articles 157 and 160a.

Article 35b

Supervision of the activities of the European Patent Office

- |     |   |  |
|-----|---|--|
| (1) | { | Unchanged from Second Preliminary<br>Draft Convention published 1971 |
| (2) |   |  |

(3) The Administrative Council shall appoint the senior officials referred to in Article 37, and shall designate the Vice-President who is to replace the President when the latter is absent. It may, on the proposal of the President of the European Patent Office, take disciplinary action in regard to those officials referred to in paragraph 3 of the said Article, while observing the provisions of the Service Regulations applicable to them. The Administrative Council shall take the decisions referred to in Article 160b.

Article 62

Exchanges of information

(1) The European Patent Office shall communicate to the central industrial property offices of the Contracting States any useful information regarding the filing of European patent applications in which these States are designated and regarding the progress made in the examination and opposition proceedings.

(1a) The central industrial property offices of the Contracting States shall inform the European Patent Office of the lapse of any European patent within their territory during the opposition period or during opposition proceedings.

(1b) Unless otherwise provided for in this Convention or in national laws, the European Patent Office and the courts or administrations of Contracting States shall give mutual assistance to each other by communicating information or opening files for inspection on request. For inspection of the files of the European Patent Office, the fee referred to in Article 149 shall not be payable.

- |     |   |   |
|-----|---|---|
| (2) | { | Unchanged from Second Preliminary<br>Draft Convention<br>published 1971 |
| (3) |   |   |
| (4) |   |   |
|     |   |   |

Article 65

Forwarding of applications for European patents

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

(5) Applications for European patents which do not reach the European Patent Office before the end of the fourteenth month as from the date of filing or, if a priority has been claimed as from the date of priority, shall be deemed to be withdrawn. The fees paid under Article 66 shall be refunded.



## CHAPTER II

### Priority

#### Article 73

#### Priority right

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

(3) By a regular national filing is meant any filing that is sufficient to establish the date on which the application was filed, whatever may be the outcome of the application.

(4) A subsequent application for the same subject-matter as a previous first application within the meaning of paragraph 3 above and filed in or in respect of the same State shall be considered as the first application for the purposes of determining priority, provided that, at the date of filing the subsequent application, the previous application has been withdrawn, abandoned or refused, without being open to public inspection and without leaving any rights outstanding, and has not served as a basis for claiming a right of priority. The previous application may not thereafter serve as a basis for claiming a right of priority.

- (5) (
- ( Unchanged from Second Preliminary  
Draft Convention published 1971

CHAPTER II

Procedure for grant

Article 88

Request for examination

- |     |   |  |
|-----|---|--|
| (1) | { | Unchanged from Second Preliminary<br>Draft Convention published 1971 |
| (2) |   |  |
| (3) |   |  |
| (4) |   | - deleted -  |
| (5) | { | Unchanged from Second Preliminary<br>Draft Convention published 1971 |
| (6) |   |  |
| (7) |   |  |

Article 88a

Amendment of the period within which a request  
for examination may be made

(1) The Administrative Council may extend the period laid down in Article 88, paragraph 2, within which a request for examination may be made:

(a) if it is established that European patent applications cannot be examined in due time, or

(b) if an extension is in the general interest.

(2) The decisions referred to in the preceding paragraph shall be published in the Official Journal of the European Patent Office.

(3) Any decision of the Administrative Council pursuant to paragraph 1 shall apply only in respect of European patent applications filed after the publication of such decision.

(4) If the Council takes a decision referred to in paragraph 1(a) it must lay down measures with a view to restoring the period referred to in Article 88, paragraph 2, as soon as possible.

CHAPTER III

Opposition procedure

Article 101

Opposition

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

(1b) Article 23, paragraphs 2, 3 and 4 shall apply mutatis mutandis to any transfer of the European patent made during the period mentioned in paragraph 1 or during opposition proceedings.

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

Article 122

International search report

Subject to the provisions of Article 137, the international search report under Article 18 of the Co-operation Treaty or any declaration made under Article 17, paragraph 2(a), of that Treaty and their publication under Article 21 of that Treaty shall take the place of the report on the state of the art under Article 79, paragraph 4, and the notification of its publication under Article 85, paragraph 5.

PART VI

RENEWAL OF EUROPEAN PATENT  
APPLICATIONS AND EUROPEAN PATENTS

CHAPTER I

Renewal of European patent applications

Article 129

Renewal fees for European patent applications

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

Article 160

Period within which a request for examination  
may be made during a transitional period

- deleted -

(Cf. Article 88a)

Article 160b (new)

Appointment of senior officials during  
a transitional period

(1) During a transitional period, the expiry of which shall be determined by the Administrative Council, the Administrative Council, after consulting the President of the European Patent Office may appoint as members of the Enlarged Board of Appeal or of the Boards of Appeal technically or legally qualified members of national courts and authorities of Contracting States who may continue their activities in their national courts or authorities.

(2) By derogation from Article 58, paragraph 1, the members referred to in the preceding paragraph may be appointed for a term of less than five years, though this shall not be less than one year. They may be reappointed.



FIRST PRELIMINARY DRAFT OF THE IMPLEMENTING REGULATIONS

Re. Article 34

No. 7

Language of applications for patents of addition

- deleted -

FIRST PRELIMINARY DRAFT OF THE IMPLEMENTING REGULATIONS

Re. Article 59

No. 1

Particulars to be entered in the Register  
of European Patents

- |             |                                    |
|-------------|------------------------------------|
| (1)         | (                                  |
| (a) to (j)  | ( Unchanged from First Preliminary |
|             | ( Draft of the Implementing        |
|             | ( Regulations, published 1971      |
| (k)         | - deleted -                        |
| (l) and (m) | ( Unchanged from First Preliminary |
|             | ( Draft of the Implementing        |
|             | ( Regulations, published 1971      |
| (n) and (o) | - deleted -                        |
| (p) to (z)  | ( Unchanged from First Preliminary |
|             | ( Draft of the Implementing        |
| (2)         | ( Regulations, published 1971      |

FIRST PRELIMINARY DRAFT OF THE IMPLEMENTING REGULATIONS

Re. Article 62

No. 1

Communications between the European Patent Office  
and the authorities of Contracting States

(1) The President of the European Patent Office shall determine the information to be communicated by the European Patent Office to the central industrial property offices of Contracting States pursuant to Article 62, paragraph 1, of the Convention.

(2)

( Unchanged from BR/131/71,  
( Annex II, page 5

FIRST PRELIMINARY DRAFT OF THE IMPLEMENTING REGULATIONS

Re. Article 64

No. 2

Date of filing of documents concerning European  
patent applications

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

(3) The authorities mentioned in Article 64, paragraph 1(b), of the Convention shall without delay inform the European Patent Office of receipt of the documents forming the European patent application, and shall notify it of the nature and date of receipt of the documents and of the number given to the application. They shall also inform the European Patent Office of any priority date claimed.

FIRST PRELIMINARY DRAFT OF THE IMPLEMENTING REGULATIONS

Re. Article 130

No. 1

Renewal fees in respect of patents of addition  
which have become independent

- deleted -

FIRST PRELIMINARY DRAFT OF THE IMPLEMENTING REGULATIONS

Re. Article 145

No. 11

Noting of certain legal consequences

- (1) ( Unchanged from First Preliminary  
( Draft of the Implementing Regulations  
( published 1971
- (a) and (b)
- (c) - deleted -
- (d) and (e) ( Unchanged from First Preliminary  
( Draft of the Implementing Regulations  
( published 1971
- (2)

FIRST PRELIMINARY DRAFT OF THE 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 of the Rules relating to  
( Fees, 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 14 ( Unchanged from First Preliminary  
( Draft of the Rules relating to  
( Fees, published 1971

15. Transfer of the European patent application, or a European patent, a licence or a right in rem in respect of the European patent application (Article 23, paragraph 2, Article 101, paragraph 1b and Article 28a, of the Convention).

Nos. 16 to 24 ( Unchanged from First Preliminary  
( Draft of the Rules relating to  
( Fees, published 1971

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