

BR/GT I/130 e/71

Travaux Préparatoires EPC 1973

Comment:

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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, 21 October 1971
BR/GT I/130/71

- Secretariat -

WORKING PARTY I

WORKING DOCUMENT

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

Articles 35a
53
54
56
75
76
113
115
151
160a (new)

- FIRST PRELIMINARY DRAFT OF THE IMPLEMENTING REGULATIONS

Re. Articles 53, No. 1
53, No. 1a (new)
53, No. 4
54, No. 1
54, No. 2
77, No. 1 (new)

(Texts drawn up by the Drafting Committee)

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CHAPTER I

Powers and functions of the Administrative Council

Article 35a

Adoption and amendment of general rules

(1) The Administrative Council shall be competent to amend:

- (a) Article 55, paragraph 2, so as to provide, in the light of experience, that an Examining Division shall consist of a single technical examiner;
- (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)

(c)

(b)

(c)

(d)

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

CHAPTER III

Organisation of the departments

Article 53

The departments

For implementing the procedures laid down in this Convention, the European Patent Office shall comprise:

- (a) a Receiving Section, Examining Divisions and Opposition Divisions,
- (b) (Unchanged from Second Preliminary
- (c) (Draft Convention
- (published 1971

Note:

The term "Examining Section" is to be replaced by "Receiving Section" in the following Articles:

- Article 55, paragraph 1
- Article 58, paragraph 2
- Article 77, paragraphs 1 and 2
- Article 78, paragraphs 2, 3, 4, 6 and 7(b)
- Article 79, paragraphs 1, 3 and 5
- Article 88, paragraph 4
- Article 108, paragraph 1
- Article 136, paragraph 6
- (see also terms used in BR/GT I/119/71, Annex I
- Article 140, paragraph 2
- Article 147, paragraph 1

Article 54

Receiving Section

Without prejudice to any further responsibilities entrusted to it pursuant to the provisions of this Convention, the Receiving Section shall be responsible for the examination of each application for a European patent up to the time when a request for examination has been made under Article 88 and a report on the state of the art has been received by the European Patent Office.

Article 56

Boards of Appeal

(1) The Boards of Appeal shall be responsible for decisions on appeal from the decisions of the Receiving Section, Examining Divisions and Opposition Divisions.

(2) A Board of Appeal shall consist of:

- three technically qualified members and two legally qualified members:

(a) when the Examining Division or Opposition Division against whose decision the appeal is made consisted of four members, or

(b) when it considers that the nature of the decision so requires;

- two technically qualified members and one legally qualified member, assisted by a technically qualified member who shall act as rapporteur but shall not take part in the decision, when the appeal is from a decision of an Examining Division consisting of less than four members, concerning:

(a) the refusal of a European patent application,

(b) the division of such application,

(c) the grant of a European patent,

and in the event of an appeal against a decision taken by an Opposition Division consisting of three members;

- three legally qualified members in all other cases.

Article 75

Claiming priority

(1) Any person desiring to take advantage of the priority of a previous application shall, on filing the application for a European patent, lodge a declaration with the European Patent Office indicating the date of the previous filing and the country in which it was made and mentioning the file number. Failure, on filing the application for a European patent, to indicate the date of the previous filing and the country in which it was made, or failure to give notice of the file number of the previous application before the end of the sixteenth month after the priority date, shall lead to the loss of the right to claim priority of filing.

(2) Any person making a declaration of priority shall lodge with the European Patent Office a copy of the first application before the end of the sixteenth month after the priority date. The copy must be certified as correct by the authority which received the first application. A certificate issued by that authority stating the date of filing shall be attached to the copy. Failure to produce the copy and the certificate in due time shall lead to the loss of the right to claim priority of filing.

(2a) In the case where the language of the first application is not one of the languages referred to in Article 34, paragraph 1, the person making a declaration of priority shall also produce, within the time limit provided in paragraph 2, a translation of the first application in the language of the proceedings accompanied by an official document certifying that it is identical to the original text. Failure to produce the translation and certificate in due time shall lead to the loss of the right to claim priority of filing.

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|-----|---|-----------------------------------|
| (3) | { | |
| (4) | | |
| (5) | | Unchanged from Second Preliminary |
| (6) | | Draft Convention |
| | { | published 1971 |

- 5 -

Article 76

Equivalence of European filing with national filing

(1) An application for a European patent which has been accorded a date of filing under Article 68 shall, in the Contracting States designated pursuant to Article 67, be equivalent to a regular national filing.

(1a)

(Unchanged from Second Preliminary
(Draft Convention
(published 1971

(2)

Article 113

Examination of appeals

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

(3) The Board of Appeal may ask an Examining Division for further information concerning the state of the art.

Article 115

Decision in respect of appeals

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

(4) If the Board of Appeal remits the matter for action by the authority which issued the decision in question, all further decisions on the matter involving the same facts shall be based on the ratio decidendi of the Board of Appeal.

CHAPTER III

Costs and their enforcement

Article 151

Costs in opposition proceedings

- (1) (Unchanged from BR/131,
(Annex I, page 12
- (2) (Unchanged from Second Preliminary
(Draft Convention
(published 1971

(3) On request, the Registry of the Opposition Division shall fix the amount of the costs to be paid under a decision apportioning them. A bill of costs, with supporting evidence, shall be attached to the request. The request shall only be admissible if the decision in respect of which the fixing of costs is required has become final. Costs may be fixed once their credibility is established.

(4) The decision of the Registry of the Opposition Division on awarding costs may be reviewed, on request, by the Opposition Division. The request, stating the reasons on which it is based, must be submitted in writing to the European Patent Office within a period of one month after the decision is issued. It shall not be considered to be submitted until such time as the fee prescribed for this purpose by the Rules relating to Fees adopted pursuant to this Convention has been paid. The Opposition Division shall take a decision on the request without oral proceedings.

Article 160a (new)

Application of Article 122

(1) Notwithstanding the provisions of Article 122, and subject to the decisions of the Administrative Council referred to in paragraph 2:

- (a) the European Patent Office shall request the International Patent Institute at The Hague to supply a supplementary report on the state of the art in respect of any international application;
- (b) the amount of the fee payable by the applicant for the drawing up of such report shall be the same as for the fee prescribed in Article 66, paragraph 3. Article 137, paragraph 3, shall apply to the collection of this fee.

(2) The Administrative Council may decide under what conditions and to what extent

- (a) the drawing up of the supplementary report referred to in paragraph 1(a) is to be dispensed with, and
- (b) the fee referred to in paragraph 1(b) is to be reduced.

(3) The Administrative Council may at any time rescind the decisions taken pursuant to paragraph 2.

FIRST PRELIMINARY DRAFT OF THE IMPLEMENTING REGULATIONS

Re. Article 53

No. 1

Allocation of duties to the Examining
Divisions and Opposition Divisions

The President of the European Patent Office shall determine the number of Examining Divisions and Opposition Divisions and shall allocate duties to these departments by reference to the international classification.

(2) - delete - (Cf. new Re. Article 53, No. 1c)

FIRST PRELIMINARY DRAFT IMPLEMENTING REGULATIONS

Re. Article 53

No. 1a (new)

Allocation of administrative duties

In addition to the responsibilities vested in them under the Convention and these Implementing Regulations, the President of the European Patent Office may allocate administrative duties to the Receiving Section, Examining Divisions and Opposition Divisions.

FIRST PRELIMINARY DRAFT OF THE IMPLEMENTING REGULATIONS

Re. Article 53

No. 4

Administrative structure of the
European Patent Office

(1) The Examining Divisions and the Opposition Divisions shall be grouped together administratively so as to form Directorates, the number of which shall be laid down by the President of the European Patent Office.

(2) The Directorates referred to in paragraph 1, the Receiving Section, the Board of Appeal and the Enlarged Board of Appeal, and the administrative services of the European Patent Office shall be grouped together administratively so as to form Directorates General.

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

FIRST PRELIMINARY DRAFT IMPLEMENTING REGULATIONS

Re. Article 54

No. 1

Special Registry for the fixing
of costs of proceedings

The President of the European Patent Office may grant exclusive responsibilities to one of the Registries of the Opposition Divisions for the fixing of the procedural costs provided for in Article 151, paragraph 3, of the Convention.

FIRST PRELIMINARY DRAFT OF THE IMPLEMENTING REGULATIONS

Re. Article 54

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 Divisions or Opposition Divisions and involving no technical or legal difficulties.

FIRST PRELIMINARY DRAFT IMPLEMENTING REGULATIONS

Re. Article 77 (new)

No. 1

Examination for certain physical requirements

The physical requirements which the European patent application must satisfy pursuant to Article 77, paragraph 2(e), of the Convention, shall be those prescribed in Articles ...

(Re. Article 66, No. 4, paragraphs 1 and 2, No. 7, paragraphs 2 to 11 and 14, and Nos. 8 and 9).
