

BR/GT I/140 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, 25 November 1971
BR/GT I/140/71

- Secretariat -

WORKING PARTY I

WORKING DOCUMENT

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

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- FIRST PRELIMINARY DRAFT OF THE IMPLEMENTING REGULATIONS

Re. Article 34, No. 1

(Texts drawn up by the Drafting Committee)

CHAPTER II

RIGHT TO THE PATENT

Article 15

Right to the grant of a European patent

(1) The right to a European patent shall belong to the inventor or his successor in title. If the inventor is an employee the right to the European patent shall be determined in accordance with the law of the State in which the employee is mainly employed; if the State in which the employee is mainly employed cannot be determined, the law to be applied shall be that of the State in which the employer has his place of business to which the employee is attached. If several persons have made an invention independently of each other, the right to the European patent shall belong to the first person to file a patent application with the European Patent Office.

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

(3) A European patent application may be filed either by joint applicants or by two or more applicants entitled in respect of one or several of the designated States. In any case, however, the unity of the application in proceedings before the European Patent Office shall not be affected. The applicants entitled in respect of the different States shall be regarded as joint applicants for the purpose of these proceedings.

CHAPTER III
EFFECTS OF THE PATENT

Article 18

Rights conferred by a European patent

Subject to the provisions of Article 107a, a European patent shall confer on its proprietor from the date of publication of its grant, in each Contracting State in respect of which it is granted, the same rights as would be conferred by a national patent granted in that State. Any infringement of a European patent shall be dealt with under the laws of that State.

CHAPTER V

THE PATENT APPLICATION AS AN OBJECT OF PROPERTY

Article 22

Unitary character of the European patent application
in proceedings
before the European Patent Office

A European patent application may be transferred or give rise
rights for one or several of the designated States. The provisions
Article 15, paragraph 3, second and third sentences, shall be
licable.

Article 34

Languages

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

(3) Subject to the exceptions provided for in the Implementing Regulations, the language of an application for a European patent, or, in the case referred to in paragraph 2, that of the translation, must be used in all proceedings before the European Patent Office and the text of the application in the language of the proceedings shall be the authentic text. If a document has to be produced before the expiration of a time limit, paragraph 2 shall apply mutatis mutandis, provided that the translation is produced in the language of the proceedings within the period prescribed in the Implementing Regulations.

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

(5) European patent applications shall be published in the language of the application or, in the case referred to in paragraph 2, that of the translation; a translation of the claims into each of the other two languages referred to in paragraph 1 shall be attached. In the cases referred to in Article 85, paragraph 3,

Article 34 (continued)

the original claims shall be published only in the language of the application or of the translation referred to in paragraph 2. The translation of the claims shall be provided by the applicant before the end of the sixteenth month after the filing date or, if a priority has been claimed, after the date or earliest date of priority.

- (6)
- (7) Unchanged from Second Preliminary
Draft Convention published 1971
- (a)
- (b)

Article 77

Examination of the European patent application
for certain deficiencies

(1) { Deleted (Cf. Article 76a, paragraph 1)

(2) { Unchanged from BR/134/71

a) {
b) {
c) { Deleted
d) {

d bis) whether the requirements of Article 154, paragraph 2, have
been satisfied;

e) {
e bis) { Unchanged from BR/134/71

f) { Deleted

g) {
h) { Unchanged from BR/134/71
i) {

j) whether the translation of the claims required by Article 34,
paragraph 5, has been provided.

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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(d bis), (e), (e bis) and (i), reveals that the European patent application does not meet the requirements to be taken into consideration in this examination, the Receiving 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 Receiving Section. If the deficiencies are not remedied in due time, the Receiving Section shall refuse the application.

(2a) The provisions of paragraph 2 shall not apply where the applicant, while claiming priority, has omitted to indicate in the request for the grant of the European patent the date and country of first filing. In such a case the right of priority of filing is lost.

(2b) If priority is claimed and the examination provided for in Article 77, paragraph 2(e bis) reveals that the date of the first filing given in the request for the grant of the European patent precedes the date of filing of the European application by more than one year, the Receiving Section shall

Article 78 (continued)

invite the applicant to renounce the priority claim or, if he has incorrectly indicated the date of the first filing, to specify the correct date. If the applicant fails to comply with this invitation within a period of one month, the right of priority of filing is lost.

- (3) (Deleted
- (4) (Deleted (Cf. paragraph 2,
third sentence)
- (5) (Deleted (Cf. Article 139)
- (6) {
- (7) (a) { Unchanged from BR/134/71
- (b) {

(8) If the examination provided for in Article 77, paragraph 2(j), reveals that the translation of the claims has not been provided, the Receiving Section shall invite the applicant to do so. If the translation has not been provided before the expiry of the period referred to in Article 34, paragraph 5, the application shall be deemed to be withdrawn.

Article 85

Publication of a European patent application

- (1) { Unchanged from BR/134/71
- (2) { Unchanged from Second Preliminary Draft
Convention published 1971

(3) If, before the termination of the technical preparations for publication, the claims of the European patent application have been amended pursuant to Article 137b, paragraph 3, and the translation referred to therein supplied, the new or amended claims shall be included in the publication in addition to the original claims.

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

Article 97a

Translation of the European patent

- deleted - (Cf. Article 107a)

Article 100 -

Cost of publication of the translation - sanction

- deleted - (Cf. Article 107a)

Article 107

Publication of a new specification

- (1) {
 - (2) { Unchanged from Second Preliminary
 - (3) { Draft Convention published 1971
 - (4) {
- deleted - (Cf. Article 107a)

PART V
EXAMINATION, GRANT AND OPPOSITION

CHAPTER IIIa
TRANSLATION OF THE PATENT SPECIFICATION

Article 107a (new)

Translation of the patent specification

(1) Any Contracting State may prescribe that if the text in which the Examining Division intends to grant a European patent for that State or in which the Opposition Division intends to maintain a patent as amended, is not drawn up in one of its official languages, the applicant or the proprietor of the patent shall, within a period of three months following the notification referred to in Article 97, paragraph 1, or Article 105, paragraph 3, as the case may be, supply to its central industrial property office a translation of this text into one of its official languages.

(2) The notification referred to in Article 97, paragraph 1, or Article 105, paragraph 3, shall indicate those Contracting States which have adopted provisions pursuant to paragraph 1.

(3) Any Contracting State which has adopted provisions pursuant to paragraph 1 may prescribe that the applicant or the proprietor of the patent must pay all or part of the costs of publication of such translation within a period laid down by that State.

Article 107a (continued)

(4) Any Contracting State may prescribe that in the event of failure to observe the provisions adopted in accordance with paragraphs 1 and 3, the European patent shall be deemed to be void in that State ab initio.

Article 123

Publication of the international application

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

(5) The translations referred to in paragraphs 2 and 3 shall be provided by the applicant not later than twenty months after the priority date of the international application, otherwise the European application shall be deemed to be withdrawn.

(6) For the purposes of Articles 59 and 149, the date of publication of the international application by the International Bureau shall be deemed to be the date of publication of the European patent application under Article 85.

Article 130

Payment of renewal fees

(1) Renewal fees in respect of the coming year shall be due on the last day of the month containing the anniversary of the date of filing of the European patent application. Renewal fees may not be validly paid more than one year before they fall due. Renewal fees shall be paid in accordance with the rate in force on the day on which they fall due.

(2) When a renewal fee has not been paid on or before the due date indicated in paragraph 1, the fee may be validly paid within six months of the said date, provided that the additional fee prescribed by the Rules relating to Fees adopted pursuant to this Convention is paid at the same time.

(2a) Any renewal fee falling due within a period of three months after the entry into force of an increase in fees and paid on or before the due date but only to the amount valid before the increase entered into force shall be deemed to have been validly paid, provided that the deficit is made good within six months of the due date. . . . Payment of the additional fee referred to in paragraph 2 shall not be required.

(3) If the amount due has not been paid within the time-limits allowed the European application shall be deemed to be withdrawn.

Article 137b (new)

Amendment of the European patent application and
of the European patent

(1) A European patent application and a European patent may not be amended in such a way that they contain subject-matter which extends beyond the content of the application as filed. A divisional application or a patent granted on the basis of a divisional application shall not contain subject-matter which extends beyond the content of the earlier application as filed.

(2) Before receiving the report on the state of the art, the applicant may not amend the description, claims or drawings of a European patent application, except where otherwise provided for in this Convention or in the Implementing Regulations.

(3) After receipt of the report on the state of the art, but before receipt of the first notification of the Examining Division, the applicant may abandon one or more of the original claims of the application or submit new or amended claims. If the applicant avails himself of this right, the new or amended claims instead of the original claims shall determine the protection sought in so far as their subject-matter does not extend beyond what was described in the application. The applicant shall provide a translation of the new or amended claims into each of the other two languages referred to in Article 34, paragraph 1.

Article 137b (continued)

(4) After receipt of the first notification from the Examining Division, the applicant may of his own volition, amend once the description, the claims and the drawings. No further amendment may be made without the consent of the Examining Division.

(5) The claims of the European patent may not be amended during opposition proceedings in such a way as to extend the protection conferred.

FIRST PRELIMINARY DRAFT OF THE IMPLEMENTING REGULATIONS

Re. Article 34

No. 1

Legal authenticity and time limit for the filing
of a translation of the application

(1) In the case referred to in Article 34, paragraph 2, of the Convention, the original text shall, in proceedings before the European Patent Office, determine whether the subject-matter of the European application or European patent extends beyond the content of the European patent application as filed.

(2) Saving proof to the contrary, the European Patent Office may, for the purposes of determining whether the subject-matter of the European application or European patent extends beyond the content of the European application as filed, deem the translation referred to in Article 34, paragraph 2, of the Convention to be in conformity with the original text of the European patent application.

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